

To: Bob Sussman/DC/USEPA/US@EPA[]
Cc: Cynthia Giles-AA/DC/USEPA/US@EPA;Dina Kruger/DC/USEPA/US@EPA;Gina McCarthy/DC/USEPA/US@EPA;Matt Bogoshian/DC/USEPA/US@EPA;"Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; ina Kruger/DC/USEPA/US@EPA;Gina McCarthy/DC/USEPA/US@EPA;Matt Bogoshian/DC/USEPA/US@EPA;"Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; ina McCarthy/DC/USEPA/US@EPA;Matt Bogoshian/DC/USEPA/US@EPA;"Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; att Bogoshian/DC/USEPA/US@EPA;"Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; harles Imohiosen/DC/USEPA/US@EPA[]
From: "Barratt-Brown, Liz"
Sent: Thur 5/6/2010 7:39:13 PM
Subject: Thanks

<http://www.epa.gov/otaq/climate/publications.htm>

<http://www.eia.doe.gov/oiaf/environment/emissions/carbon/index.html>

[1]

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That is SO great to hear. Thank you Bob and thank you all. And thanks for looping in Shalini.

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 Sent: Thursday, May 06, 2010 3:48 PM
 To: Barratt-Brown, Liz
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Oil savings numbers and GHG analysis are coming shortly but Luke Tonachel also referred me to your excellent report from this February (<http://www.epa.gov/otaq/climate/publications.htm>, slide 52). I think EIA's report released yesterday (<http://www.eia.doe.gov/oiaf/environment/emissions/carbon/index.html>) can also be helpful in answering the "need" issue. It documents the decoupling of our energy use/emissions from GDP and shows that our energy use in the transportation, among other sectors, has declined.

Please let us know how else we can be helpful.

Our Executive Director will be meeting with Administrator Jackson on Tuesday and will raise this issue with her as well.

All best and we look forward to hearing from you shortly,

Liz

Presidential Permits for Pipelines

Executive Order 13337 of April 30, 2004 designates and empowers the Secretary of State to "receive all applications for Presidential permits, as referred to in Executive Order 11423, as amended, for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country." [1] .

EPA's Authority Under Executive Order 13337

The executive order goes on to mandate that "Upon receipt of a completed application... the Secretary of State shall... refer the application and pertinent information to, and request the views of... the Administrator of the Environmental Protection Agency." The Administrator of the EPA, along with the other Federal Government officials to whom the application is referred "shall provide their views and render such assistance as may be requested, consistent with their authority, in a timely manner, but not to exceed 90 days from the date of the request."

The EPA Administrator (and other federal government officials) may:

- Request additional information from the Department of State (in which case the time it takes for the EPA to provide that information is not included in the 90 days)
- Provide their views and assistance about the application
- Notify the Secretary of State that he or she disagrees with the Secretary's proposed determination and request that the Secretary refer the application, together with statements of the views of any official involved, to the President for consideration and a final decision.

[1] Executive Order 13337 can be found here: <http://edocket.access.gpo.gov/2004/pdf/04-10378.pdf>. Executive Order 11423 can be found here: <http://www.archives.gov/federal-register/codification/executive-order/11423.html>.

To: lizbb@nrdc.org;"Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]
Cc: []
Bcc: []
From: CN=Aaron Levy/OU=DC/O=USEPA/C=US
Sent: Wed 6/2/2010 8:07:51 PM
Subject: Keystone XL

Hello Liz and Susan,

I'm writing to ask if you are available for a meeting discuss the Keystone XL pipeline. This would be a staff-level meeting to discuss your perspective on GHG impacts and needs assessment regarding the proposed pipeline. On EPA's side the meeting would include Sarah Dunham, Dina Kruger (assuming we can find a time that works for both) and relevant staff from OTAQ and CCD.

Scheduling could be a challenge, but late next week (Thurs or Fri) looks like a good possibility. Please let me know about whether you are interested and your availability.

Regards, Aaron

~~~~~

Aaron Levy  
U.S. Environmental Protection Agency  
Transportation and Climate Division  
Office of Transportation and Air Quality  
Tel: (202) 564-2993  
Fax: (202) 564-1177  
Levy.Aaron@epa.gov

**To:** Aaron Levy/DC/USEPA/US@EPA;"Barratt-Brown, Liz" [lizbb@nrdc.org]; Barratt-Brown, Liz" [lizbb@nrdc.org]  
**From:** "Casey-Lefkowitz, Susan"  
**Sent:** Wed 6/2/2010 8:32:27 PM  
**Subject:** Re: Keystone XL

Hi Aaron,

We would like to meet with you. Late next week might work very well. What about Thursday, June 10 sometime in the afternoon?

Best,

Susan

----- Original Message -----

From: Levy.Aaron@epamail.epa.gov <Levy.Aaron@epamail.epa.gov>  
To: Barratt-Brown, Liz; Casey-Lefkowitz, Susan  
Sent: Wed Jun 02 16:07:51 2010  
Subject: Keystone XL

Hello Liz and Susan,

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To: "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]
Cc: "Barratt-Brown, Liz" [lizbb@nrdc.org]
Bcc: []
From: CN=Aaron Levy/OU=DC/O=USEPA/C=US
Sent: Wed 6/2/2010 9:06:27 PM
Subject: Re: Keystone XL

Great.

I'm scheduling a meeting at 1pm on Thursday (6/10) at EPA 's Ariel Rios North Building. I'll pass along more info as details get nailed down.

-Aaron

From: "Casey-Lefkowitz, Susan" <sclefkowitz@nrdc.org>
 To: Aaron Levy/DC/USEPA/US@EPA, "Barratt-Brown, Liz" <lizbb@nrdc.org>
 Date: 06/02/2010 04:33 PM
 Subject: Re: Keystone XL

Hi Aaron,

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Best,

Susan

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 To: Barratt-Brown, Liz; Casey-Lefkowitz, Susan
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Tel: (202) 564-2993  
Fax: (202) 564-1177  
Levy.Aaron@epa.gov

**To:** "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; Barratt-Brown, Liz" [lizbb@nrdc.org]  
**Cc:** CN=Sarah Dunham/OU=DC/O=USEPA/C=US@EPA;CN=Dina Kruger/OU=DC/O=USEPA/C=US@EPA;CN=Michael Shelby/OU=DC/O=USEPA/C=US@EPA;CN=Benjamin Hengst/OU=DC/O=USEPA/C=US@EPA[]; N=Dina Kruger/OU=DC/O=USEPA/C=US@EPA;CN=Michael Shelby/OU=DC/O=USEPA/C=US@EPA;CN=Benjamin Hengst/OU=DC/O=USEPA/C=US@EPA[]; N=Michael Shelby/OU=DC/O=USEPA/C=US@EPA;CN=Benjamin Hengst/OU=DC/O=USEPA/C=US@EPA[]; N=Benjamin Hengst/OU=DC/O=USEPA/C=US@EPA[]  
**Bcc:** []  
**From:** CN=Aaron Levy/OU=DC/O=USEPA/C=US  
**Sent:** Wed 6/9/2010 9:13:39 PM  
**Subject:** Mtg w/ EPA

Susan,

The meeting is confirmed for 1pm tomorrow (Thursday).

We will gather in Sarah's office in the EPA Ariel Rios North Building (1200 Pennsylvania Ave NW). You need to use the main entrance, which is directly to your right as you come up the escalator from the Federal Triangle Metro Station. Please allow 10 minutes to go through security check-in and have the guards at the front desk call me (564-2993) when you arrive.

The expected EPA participants (all from TCD and CCD) are copied on this email.

We look forward to seeing you. If you have any questions please don't hesitate to call.

Best, Aaron

~~~~~

Aaron Levy
 U.S. Environmental Protection Agency
 Transportation and Climate Division
 Office of Transportation and Air Quality
 Tel: (202) 564-2993
 Fax: (202) 564-1177
 Levy.Aaron@epa.gov

From: "Casey-Lefkowitz, Susan" <sclefkowitz@nrdc.org>
 To: Aaron Levy/DC/USEPA/US@EPA, "Barratt-Brown, Liz" <lizbb@nrdc.org>
 Date: 06/09/2010 10:18 AM
 Subject: Re: Keystone XL

Hi Aaron,

I just wanted to confirm our meeting tomorrow, Thursday at 1 pm.

Please let us know where we should come and if anyone else will join from your side.

Best,

Susan

----- Original Message -----

From: Casey-Lefkowitz, Susan

To: 'Levy.Aaron@epamail.epa.gov' <Levy.Aaron@epamail.epa.gov>; Barratt-Brown, Liz

Sent: Wed Jun 02 16:32:27 2010

Subject: Re: Keystone XL

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Fax: (202) 564-1177

Levy.Aaron@epa.gov

**To:** Benjamin Hengst/DC/USEPA/US@EPA;"Barratt-Brown, Liz" [lizbb@nrdc.org]; Barratt-Brown, Liz" [lizbb@nrdc.org]  
**From:** "Casey-Lefkowitz, Susan"  
**Sent:** Thur 6/10/2010 7:08:54 PM  
**Subject:** RE: Introduction

Hi Ben,

Thanks for emailing and sorry that the intro never happened in the meeting! We did work with Rebeca White and often consulted with her about how to best handle issues within EPA. It is very good to meet you and to know that we can work with you on these issues as well.

Perhaps we can find a time to get together to chat further. We are on a trip next week, but maybe later in June or in early July.

Best,

Susan

Susan Casey-Lefkowitz  
 Director International Program  
 Natural Resources Defense Council  
 1200 New York Ave, N.W., Suite 400  
 Washington, D.C. 20005  
 Tel: 1-202-289-2366, Cell: 1-646-287-6225  
 Fax: 1-202-289-1060  
 Email: [sclefkowitz@nrdc.org](mailto:sclefkowitz@nrdc.org)  
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<http://switchboard.nrdc.org/blogs/sclefkowitz/>

-----Original Message-----

From: Hengst.Benjamin@epamail.epa.gov [mailto:Hengst.Benjamin@epamail.epa.gov]  
 Sent: Thursday, June 10, 2010 3:02 PM  
 To: Barratt-Brown, Liz; Casey-Lefkowitz, Susan  
 Subject: Introduction

Hi Liz, Susan--

I didn't get a chance to properly introduce myself at the 1pm meeting we had here at EPA with Dina and Sarah (on the Keystone pipeline). I recently joined OTAQ, and was hired to take Rebecca White's old job--essentially as Sarah's deputy. I'm not sure if and how much you worked with Rebecca, but please feel free to use me as a conduit to sound issues out, get through to Sarah or others, etc.

My recent background: I've been in EPA's air office for several years, but have worked mostly on stationary source issues (though I did work

closely with Simon Mui on a CTL analysis). More recently, I just returned from a 2-year detail on the House Energy & Commerce Committee, where I worked hand-in-hand with Alexandra, Greg, et. al. (as well as many of your colleagues at NRDC), on HR 2454--mostly on power sector and offsets provisions

I look forward to working with you both.

Regards,  
Ben

-----

Ben Hengst  
EPA Office of Air and Radiation  
(202) 564-1495

**To:** lizbb@nrdc.org;sclefkowitz@nrdc.org[]; clefkowitz@nrdc.org[]  
**Cc:** []  
**Bcc:** []  
**From:** CN=Benjamin Hengst/OU=DC/O=USEPA/C=US  
**Sent:** Thur 6/10/2010 7:01:58 PM  
**Subject:** Introduction

Hi Liz, Susan--

I didn't get a chance to properly introduce myself at the 1pm meeting we had here at EPA with Dina and Sarah (on the Keystone pipeline). I recently joined OTAQ, and was hired to take Rebecca White's old job--essentially as Sarah's deputy. I'm not sure if and how much you worked with Rebecca, but please feel free to use me as a conduit to sound issues out, get through to Sarah or others, etc.

My recent background: I've been in EPA's air office for several years, but have worked mostly on stationary source issues (though I did work closely with Simon Mui on a CTL analysis). More recently, I just returned from a 2-year detail on the House Energy & Commerce Committee, where I worked hand-in-hand with Alexandra, Greg, et. al. (as well as many of your colleagues at NRDC), on HR 2454--mostly on power sector and offsets provisions

I look forward to working with you both.

Regards,  
Ben

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EPA Office of Air and Radiation  
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**To:** "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]  
**Cc:** Matt Bogoshian/DC/USEPA/US@EPA;"Barratt-Brown, Liz" [lizbb@nrdc.org]; Barratt-Brown, Liz" [lizbb@nrdc.org]; kate.colarulli@sierraclub.org" [kate.colarulli@sierraclub.org]  
**From:** Lena Moffitt  
**Sent:** Thur 6/10/2010 10:55:09 PM  
**Subject:** Re: EPA meeting  
[sclefkowitz@nrdc.org](mailto:sclefkowitz@nrdc.org)  
[Hotspot](#)  
[sclefkowitz@nrdc.org](mailto:sclefkowitz@nrdc.org)  
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[www.welovebirds.org](http://www.welovebirds.org)  
<http://switchboard.nrdc.org/blogs/sclefkowitz/>

Thank you, Susan. Matt, we would be more than happy to meet with you next week. Just let us know what works for you. I'd be very interested to learn the extent to which EPA has engaged with State on both the draft EIS and national interest determination. We can also update you on our efforts and explore any ways in which we can support you guys.

Cheers,

Lena Moffitt  
Sierra Club  
(505) 480-1551 (c)  
Sent from my iPhone

On Jun 10, 2010, at 6:44 PM, "Casey-Lefkowitz, Susan" <sclefkowitz@nrdc.org> wrote:

Hi Matt,

Thanks very much for your call. Sorry that I was out when it came through. We would be very interested to meet with you again. Unfortunately, Liz and I are out all next week (up in the tar sands), but I hope that Sierra Club might be able to help in making sure that you are meeting with the right people for the issues you want to discuss. I am copying Lena Moffitt and Kate Colarulli.

Today, Liz and I met with Dina Kruger, Sarah Dunham, Michael Shelby, Benjamin Hengst, and Aaron Levy where we discussed some of our comments on and concerns about the Keystone XL tar sands pipeline DEIS. We would also very much like to follow up with you.

I will be back in the office the week of June 21 and can also meet then.

Best regards,



Susan

Susan Casey-Lefkowitz  
Director International Program  
Natural Resources Defense Council  
1200 New York Ave, N.W., Suite 400  
Washington, D.C. 20005  
Tel: 1-202-289-2366, Cell: 1-646-287-6225  
Fax: 1-202-289-1060  
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<http://switchboard.nrdc.org/blogs/sclefkowitz/>

**To:** "Lena Moffitt" [Lena.Moffitt@sierraclub.org]; Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]  
**Cc:** "Barratt-Brown, Liz" [lizbb@nrdc.org]; ate.colarulli@sierraclub.org;"Linda Huffman" [Huffman.Linda@epamail.epa.gov]; Linda Huffman" [Huffman.Linda@epamail.epa.gov]  
**From:** CN=Matt Bogoshian/OU=DC/O=USEPA/C=US  
**Sent:** Fri 6/11/2010 7:07:49 PM  
**Subject:** Re: EPA meeting  
[sclefkowitz@nrdc.org](mailto:sclefkowitz@nrdc.org)  
[Hotspot](#)  
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Thanks Lena and Susan.

Our timing is now working out that the week of June 21 may be best after all so if that can still work for all at your end, then Linda Huffman can help us make the arrangements.

Regards,  
Matt

From: Lena Moffitt [Lena.Moffitt@sierraclub.org]  
Sent: 06/10/2010 06:55 PM AST  
To: "Casey-Lefkowitz, Susan" <sclefkowitz@nrdc.org>  
Cc: Matt Bogoshian; "Barratt-Brown, Liz" <lizbb@nrdc.org>; "kate.colarulli@sierraclub.org" <kate.colarulli@sierraclub.org>  
Subject: Re: EPA meeting

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Susan

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Natural Resources Defense Council  
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**To:** Matt Bogoshian/DC/USEPA/US@EPA[]  
**Cc:** Linda Huffman/DC/USEPA/US@EPA;kate.colarulli@sierraclub.org;"Barratt-Brown, Liz" [lizbb@nrdc.org]; ate.colarulli@sierraclub.org;"Barratt-Brown, Liz" [lizbb@nrdc.org]; Barratt-Brown, Liz" [lizbb@nrdc.org]; Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]  
**From:** Lena Moffitt  
**Sent:** Fri 6/11/2010 7:13:40 PM  
**Subject:** Re: EPA meeting  
[sclefkowitz@nrdc.org](mailto:sclefkowitz@nrdc.org)  
[Hotspot](#)  
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<http://switchboard.nrdc.org/blogs/sclefkowitz/>

I agree, it would be ideal to have us all able to attend. The week of the 21st works for me!

Lena Moffitt  
 Washington Representative  
 Sierra Club  
 (202) 675-2396 (w)  
 (505) 480-1551 (c)

**From:** Bogoshian.Matt@epamail.epa.gov  
**To:** "Lena Moffitt" <Lena.Moffitt@sierraclub.org>, "Casey-Lefkowitz, Susan" <sclefkowitz@nrdc.org>  
**Cc:** "Barratt-Brown, Liz" <lizbb@nrdc.org>, kate.colarulli@sierraclub.org, "Linda Huffman" <Huffman.Linda@epamail.epa.gov>  
**Date:** 06/11/2010 03:08 PM  
**Subject:** Re: EPA meeting

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 Matt

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**To:** "Lena Moffitt" [Lena.Moffitt@sierraclub.org]; att Bogoshian/DC/USEPA/US@EPA[]  
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**From:** "Casey-Lefkowitz, Susan"  
**Sent:** Fri 6/11/2010 8:06:59 PM  
**Subject:** RE: EPA meeting  
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<http://switchboard.nrdc.org/blogs/sclefkowitz/>

Hi Matt,

That works well. I am around most of that week, except June 24.

Best,

Susan

Susan Casey-Lefkowitz  
Director International Program  
Natural Resources Defense Council  
1200 New York Ave, N.W., Suite 400  
Washington, D.C. 20005  
Tel: 1-202-289-2366, Cell: 1-646-287-6225  
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Email: [sclefkowitz@nrdc.org](mailto:sclefkowitz@nrdc.org)  
[www.nrdc.org](http://www.nrdc.org)  
[www.stopdirtyfuels.org](http://www.stopdirtyfuels.org) [www.welovebirds.org](http://www.welovebirds.org)  
  
<http://switchboard.nrdc.org/blogs/sclefkowitz/>

From: Lena Moffitt [mailto:Lena.Moffitt@sierraclub.org]  
Sent: Friday, June 11, 2010 3:14 PM  
To: Bogoshian.Matt@epamail.epa.gov  
Cc: Linda Huffman; kate.colarulli@sierraclub.org; Barratt-Brown, Liz; Casey-Lefkowitz, Susan  
Subject: Re: EPA meeting

I agree, it would be ideal to have us all able to attend. The week of the 21st works for me!

Lena Moffitt  
Washington Representative  
Sierra Club  
(202) 675-2396 (w)  
(505) 480-1551 (c)

From: Bogoshian.Matt@epamail.epa.gov  
To: "Lena Moffitt" <Lena.Moffitt@sierraclub.org>, "Casey-Lefkowitz, Susan" <sclfkowitz@nrdc.org>  
Cc: "Barratt-Brown, Liz" <lizbb@nrdc.org>, kate.colarulli@sierraclub.org, "Linda Huffman" <Huffman.Linda@epamail.epa.gov>  
Date: 06/11/2010 03:08 PM  
Subject: Re: EPA meeting

Thanks Lena and Susan.

Our timing is now working out that the week of June 21 may be best after all so if that can still work for all at your end, then Linda Huffman can help us make the arrangements.

Regards,  
Matt

From: Lena Moffitt [Lena.Moffitt@sierraclub.org]  
Sent: 06/10/2010 06:55 PM AST  
To: "Casey-Lefkowitz, Susan" <sclfkowitz@nrdc.org>  
Cc: Matt Bogoshian; "Barratt-Brown, Liz" <lizbb@nrdc.org>; "kate.colarulli@sierraclub.org" <kate.colarulli@sierraclub.org>  
Subject: Re: EPA meeting

Thank you, Susan. Matt, we would be more than happy to meet with you next week. Just let us know what works for you. I'd be very interested to learn the extent to which EPA has engaged with State on both the draft EIS and



national interest determination. We can also update you on our efforts and explore any ways in which we can support you guys.

Cheers,

Lena Moffitt  
Sierra Club  
(505) 480-1551 (c)  
Sent from my iPhone

On Jun 10, 2010, at 6:44 PM, "Casey-Lefkowitz, Susan" <sclefkowitz@nrdc.org> wrote:

Hi Matt,

Thanks very much for your call. Sorry that I was out when it came through. We would be very interested to meet with you again. Unfortunately, Liz and I are out all next week (up in the tar sands), but I hope that Sierra Club might be able to help in making sure that you are meeting with the right people for the issues you want to discuss. I am copying Lena Moffitt and Kate Colarulli.

Today, Liz and I met with Dina Kruger, Sarah Dunham, Michael Shelby, Benjamin Hengst, and Aaron Levy where we discussed some of our comments on and concerns about the Keystone XL tar sands pipeline DEIS. We would also very much like to follow up with you.

I will be back in the office the week of June 21 and can also meet then.

Best regards,

Susan

Susan Casey-Lefkowitz  
Director International Program  
Natural Resources Defense Council  
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<http://switchboard.nrdc.org/blogs/sclefkowitz/>

**To:** Benjamin Hengst/DC/USEPA/US@EPA;"Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]  
**From:** "Barratt-Brown, Liz"  
**Sent:** Fri 6/18/2010 12:41:11 AM  
**Subject:** RE: Introduction

Thanks Ben! Our colleagues on our fuel team were pleased you were in the meeting. Thanks for making the introduction and sorry for the delay. We are just returning from a trip to Alberta. We worked quite closely with Rebecca and work very closely with Alexandra. Great that you were there!

All best and thanks again,

Liz

-----Original Message-----

From: Hengst.Benjamin@epamail.epa.gov  
 [mailto:Hengst.Benjamin@epamail.epa.gov]  
 Sent: Thursday, June 10, 2010 3:02 PM  
 To: Barratt-Brown, Liz; Casey-Lefkowitz, Susan  
 Subject: Introduction

Hi Liz, Susan--

I didn't get a chance to properly introduce myself at the 1pm meeting we had here at EPA with Dina and Sarah (on the Keystone pipeline). I recently joined OTAQ, and was hired to take Rebecca White's old job--essentially as Sarah's deputy. I'm not sure if and how much you worked with Rebecca, but please feel free to use me as a conduit to sound issues out, get through to Sarah or others, etc.

My recent background: I've been in EPA's air office for several years, but have worked mostly on stationary source issues (though I did work closely with Simon Mui on a CTL analysis). More recently, I just returned from a 2-year detail on the House Energy & Commerce Committee, where I worked hand-in-hand with Alexandra, Greg, et. al. (as well as many of your colleagues at NRDC), on HR 2454--mostly on power sector and offsets provisions

I look forward to working with you both.

Regards,  
 Ben

-----

Ben Hengst  
 EPA Office of Air and Radiation  
 (202) 564-1495

**To:** Matt Bogoshian/DC/USEPA/US@EPA[]  
**Cc:** "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; Barratt-Brown, Liz" [lizbb@nrdc.org]  
**From:** "Shope, Elizabeth"  
**Sent:** Thur 6/24/2010 3:43:51 PM  
**Subject:** Thanks and Your Keystone XL Comments  
[eshope@nrdc.org](mailto:eshope@nrdc.org)

Hi Matt,

Thanks for taking the time to meet on Tuesday. We are really glad that you – along with many others at EPA it sounded like – are taking the time to work on comments to the State Department about Keystone XL, and I wanted to offer our help. We have especially done a lot of research and analysis of refineries for our own detailed comments on the Draft EIS, and would be happy to share some of it with you, and either have or could try to track down information on other issues surrounding tar sands and Keystone XL as well.

Please let us know if there's anything we can do to help you – as you put it – figure out your hand.

Thanks again!

Elizabeth

Elizabeth Shope  
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**To:** Matt Bogoshian/DC/USEPA/US@EPA[]  
**Cc:** Cliff Rader/DC/USEPA/US@EPA;"Shope, Elizabeth" [eshope@nrdc.org]; Shope, Elizabeth" [eshope@nrdc.org]  
**From:** "Barratt-Brown, Liz"  
**Sent:** Tue 2/8/2011 11:31:07 PM  
**Subject:** Legal Letter  
[FINAL NRDC - Sierra Club Keystone XL SEIS Comment Letter December 2010 fin.pdf](#)  
[rader.cliff@epa.gov](mailto:rader.cliff@epa.gov)  
[bogoshian.matthew@epa.gov](mailto:bogoshian.matthew@epa.gov)  
[eshope@nrdc.org](mailto:eshope@nrdc.org)

This might be of interest for our meeting next week.

Looking forward to seeing you,

Liz

Liz Barratt-Brown

Senior Attorney

Natural Resources Defense Council

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From: Shope, Elizabeth  
Sent: Tuesday, February 08, 2011 6:21 PM  
To: Barratt-Brown, Liz  
Subject: Legal Letter

Attached to send to:

rader.cliff@epa.gov; bogoshian.matthew@epa.gov

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NATURAL RESOURCES DEFENSE COUNCIL

## **Comments to the Department of State Regarding the Need for a Supplemental Environmental Impact Statement for the TransCanada Keystone XL Pipeline**

Submitted December 16, 2010

Via electronic and U.S. mail to:

Robert D. Hormats  
Under Secretary for Economic, Energy, and Agricultural Affairs  
U.S. Department of State  
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## Natural Resources Defense Council and the Sierra Club

December 16, 2010

Via electronic and U.S. mail

**Re: Comments to the Department of State Regarding the Need for a Supplemental Environmental Impact Statement for the TransCanada Keystone XL Pipeline**

Dear Mr. Hormats, Mr.Koh, and Ms. Jones;

On behalf of the Natural Resources Defense Council and the Sierra Club we submit the following comments regarding the need for a Supplemental Environmental Impact Statement (SEIS) for the proposed TransCanada Keystone XL Pipeline Project (hereinafter “Keystone XL,” the “Pipeline” or the “Project”). In the comments below, we outline significant new information and changed circumstances associated with the Project as well as substantial changes in the project, all of which occurred after the public comment period on the Draft Environmental Impact Statement (DEIS) closed in July 2010. We also identify substantial defects in the DEIS that should be corrected in an SEIS, which would further the purposes of the National Environmental Policy Act (NEPA).

Since publication of the DEIS, the scope of the project has changed considerably. TransCanada was granted common carrier status in Montana, which led to the addition of the Bakken Marketlink Interconnection that will require huge amounts of additional infrastructure and allow domestic oil producers to upload their product to market. TransCanada also withdrew its Pipeline and Hazardous Materials Safety Administration (PHMSA) special permit application that would have allowed Keystone XL to operate at a higher-than-normal operating pressure. Without a special permit, the capacity of the pipeline will change drastically. These changes in the project must be analyzed in an SEIS.

In addition, significant new information and circumstances have recently arisen that require analysis in an SEIS. A series of disasters over the summer, including a tar sands crude oil pipeline spill of over one million gallons of diluted bitumen (DilBit) into the Kalamazoo River in Michigan has exposed the challenges of transporting highly corrosive, acidic and potentially unstable DilBit through pipelines. Safety concerns have been confirmed and heightened by that and other recent pipeline spills, and an ongoing investigation by PHMSA regarding TransCanada’s potential use of defective steel in the Keystone I pipeline.

New circumstances and information have also arisen regarding impacts to protected and vulnerable species. For example, the DEIS’s cumulative analysis of impacts to species such as the Brown Pelican are outdated in light of the Deepwater Horizon oil spill disaster, which has adversely affected many species and rendered them more susceptible to impacts from this project. In addition, TransCanada recently announced that the Project is likely to adversely

affect the American burying beetle, a species listed as endangered under the Endangered Species Act (ESA). An SEIS is necessary to evaluate the Project's impacts on these species and consider alternatives which would mitigate impacts on these and other sensitive species.

We also identify a number of insufficiencies in the DEIS for which an SEIS should be issued to further the purposes of NEPA, including the failure to address DOE's concerns regarding the needs analysis for the Project; the failure to adequately analyze the Project's greenhouse gas impacts; the failure to analyze the unique risks associated with the transportation of DilBit through pipelines; alternatives that would avoid important aquifers; the failure to adequately address the environmental justice impacts of air and water pollution on communities; the failure to adequately address impacts on migratory birds; the failure to adequately identify and analyze mitigation measures; the failure to adequately analyze refinery emissions; the failure to adequately analyze wetland impacts; and the failure to evaluate transboundary impacts.

In light of major changes made to the project since the close of the comment period on the DEIS as well as new information and circumstances, we urge DOS to issue an SEIS for Keystone XL and provide sufficient opportunity for public comment. In addition, DOS should use this SEIS as an opportunity to correct the substantial deficiencies in the DEIS, which would further the purposes of NEPA.

## **I. LEGAL REQUIREMENTS FOR A SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT**

NEPA requires a supplement to an EIS when significant new information or changes in a project implicate significant changes in the environmental analysis. The NEPA regulations require that:

(1) Agencies...[s]hall prepare supplements to either draft or final environmental impact statements if: (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.<sup>1</sup> (2) [Agencies] may also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.<sup>2</sup>

The use of the word „shall“ is mandatory: it creates a duty on the part of the agency to prepare a supplemental EIS if substantial changes from any of the proposed alternatives are made and the changes are relevant to environmental concerns.<sup>3</sup> In determining whether new

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<sup>1</sup> 40 C.F.R. § 1502.9 (1978).

<sup>2</sup> 40 C.F.R. § 1502.9 (1978).

<sup>3</sup> *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 372 (1989) (recognizing the duty where there are significant new circumstances or information); *see also Dubois v. U.S. Dep't. of Agric.*, 102 F.3d 1273, 1292 (1st Cir. 1996).

information is significant, a court should look to the NEPA “significance factors” found in 40 C.F.R. § 1508.27(b) (1978).<sup>4</sup>

When determining if new circumstances or new information require an agency to issue a supplemental EIS, a court should consider the following factors: (a) the environmental significance of the new information; (b) its probable accuracy; (c) the degree to which the agency considered the new information and considered its impact; and (d) the degree to which the agency supported its decision not to supplement its decision not to supplement its impact statement with explanation or additional data.<sup>5</sup>

## **II. DOS MUST PREPARE A SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT BECAUSE THERE HAVE BEEN SUBSTANTIAL CHANGES IN THE PROPOSED ACTION**

DOS must prepare an SEIS for the Project to address substantial changes in the proposed action. Subsequent to the close of the DEIS comment period in July 2010, the scale and design of the proposed project have changed significantly because of the addition of the Bakken Marketlink interconnection in Montana and because of the withdrawal of TransCanada’s application for a special permit from PHMSA.

### **A. Significant New Circ umstances Have Arisen Regarding TransCanada ’s Status as a Common Carrier in Montana and the State -Mandated Bakken Marketlink Interconnection Constitutes a Substantial Change to the Project**

The DEIS notes the possibility that a Montana interconnection pipeline system might allow Bakken oil to be uploaded in Eastern Montana, and describes the facilities that an interconnection would require.<sup>6</sup> In cursory fashion, the DEIS describes that this “speculative” interconnection would require an on-ramp pipeline, significant new aboveground infrastructure, and the modification of a Keystone XL pump station.<sup>7</sup> The DEIS briefly lists the potential impacts that could result from an interconnection.<sup>8</sup> However, it avoids NEPA’s required “hard

<sup>4</sup> *Natural Res. Def. Council v. Lujan*, 768 F. Supp. 870, 886 (D.D.C. 1991) (a new report that contained a substantially different estimate of the amount of oil expected to be found in Alaska required the preparation of an SEIS).

<sup>5</sup> *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1025 (9th Cir. 1980); *Commonwealth of Massachusetts v. Watt*, 716 F.2d 946 (1st Cir. 1983).

<sup>6</sup> Keystone XL Draft Environmental Impact Statement (“DEIS”), 3.14-6 (available at <http://keystonepipeline-xl.state.gov> (last visited Dec. 15, 2010)).

<sup>7</sup> DEIS, 3.14-6. An interconnecting “on-ramp” pipeline would include pump stations with a receive trap and a pressure control valve/skid located at the receipt facility; a receipt/injection facility of at least 8 to 9 acres, including a complex custody transfer station; 7 acres of storage tanks capable of holding at least 300,000-600,000 barrels of oil; a booster pump system; an electronic substation and electrical building with additional controls and instrumentation; Modification of a Keystone XL pump station, including a connection to the pump station, two block valves, and two check valves. *Id.*

<sup>8</sup> DEIS, 3.14-7 (“Key issues would include visual resources in the vicinity of the storage tanks and pump stations, cultural resources, changes in land use, increased tax revenues, increased employment, and potentially accelerating the development of crude oil resources.”).

look” at the impacts or possible alternative configurations of a Bakken interconnection by dismissing it as “currently speculative” and implying that it is not economically feasible.<sup>9</sup>

In August 2010, the Montana Public Service Commission (PSC) awarded common carrier status to TransCanada.<sup>10</sup> As a result, Montana oil producers now have the legal right to upload oil onto the Pipeline at interconnection sites. The substantial new pipeline infrastructure required to link Montana oil shippers to the Keystone XL has become known as the “Bakken Marketlink Project.” In September, Governor Brian Schweitzer and TransCanada announced a “binding Open Season” to obtain firm commitments for the Bakken Marketlink Project.<sup>11</sup> This will allow Montana oil producers to transport their oil to Cushing, Oklahoma, and on to the Gulf Coast via the Project. TransCanada completed an Open Season on November 19 and is now evaluating bids for the Marketlink Project.<sup>12</sup>

The Bakken Marketlink Project is now well beyond the “speculative” stage. Regardless of the ongoing contract bidding process, this connected pipeline project is a “reasonably foreseeable” future action that requires NEPA analysis.<sup>13</sup>

This foreseeable new pipeline infrastructure has the potential for significant environmental impacts, could significantly alter the size and character of the Project, and comprises an alternative configuration of the Project that was not considered in the DEIS. A change in configuration of the Project that the public has not had a chance to comment on requires the preparation of a supplemental EIS.<sup>14</sup>

NEPA requires “connected actions” “to be considered together in a single EIS.”<sup>15</sup> The NEPA regulations provide direction on when projects such as the Keystone XL pipeline and the Bakken pipeline should be considered together in a single EIS. These regulations define “connected actions” as actions that are “closely related and therefore should be discussed in the same impact statement.”<sup>16</sup>

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<sup>9</sup> DEIS, 3.14-7.

<sup>10</sup> Energy Pipeline News, Montana PSC grants Keystone XL qualified eminent domain powers, August 18, 2010, <http://energypipelinenews.blogspot.com/2010/08/montana-psc-grants-keystone-xl.html> (last visited Dec. 15, 2010).

<sup>11</sup> The Billings Outpost, State, TransCanada launch Open Season for oil, Sept. 23, 2010, [http://www.billingsnews.com/index.php?option=com\\_content&view=article&id=1952:state-transcanada-launch-open-season-for-oil&catid=64:business-news&Itemid=113](http://www.billingsnews.com/index.php?option=com_content&view=article&id=1952:state-transcanada-launch-open-season-for-oil&catid=64:business-news&Itemid=113) (last visited Dec. 15, 2010).

<sup>12</sup> The Bakken Marketlink Project is expected to commence providing service in the first quarter of 2013. See <http://www.transcanada.com/bakken.html> (last visited Dec. 15, 2010).

<sup>13</sup> See *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1215 (9th Cir. 1998). In addition to TransCanada’s own literature cited above, the company also states that the Project is now more definite, “follow[ing] a successful expression of interest phase, which was conducted earlier in 2010” (<http://www.transcanada.com/bakken.html> (last visited Dec. 15, 2010)).

<sup>14</sup> *Dubois v. U.S. Dept. of Agric.*, 102 F.3d 1273, 1293 (1st Cir. 1996).

<sup>15</sup> *Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir.1985).

<sup>16</sup> 40 C.F.R. § 1508.25(a)(1)(1978). “Connected actions” are those that i) automatically trigger other actions which may require environmental impact statements; ii) cannot or will not proceed unless other actions are taken previously or simultaneously; and iii) are interdependent parts of a larger action and depend on the larger actions for their justification. *Klamath-Siskiyou Wildlands Center v. Bureau of Land*

The Keystone XL pipeline project and the Bakken Marketlink Pipeline are “connected actions.” The Bakken Marketlink Project is a pipeline interconnection that will be physically connected to the Project. Its utility absolutely depends on Keystone XL: if Keystone XL were not built, the Bakken Marketlink Project would serve no purpose (there would be no larger pipeline on which to upload Bakken oil). Furthermore, the Keystone XL pipeline could not take place without the Bakken Marketlink Project because Montana’s common carrier law now requires TransCanada to allow domestic producers to upload oil.

The Bakken Marketlink Project satisfies the “connected action” elements of 40 C.F.R. § 1508.25(a)(1) and therefore must be considered in a single EIS.<sup>17</sup> An SEIS must examine the environmental impacts of the interconnection facilities, and provide an analysis of several alternatives for these facilities, including analyses of their respective water crossings and proximity to sensitive areas.

An SEIS must also analyze and inform the public as to how the additional sources of conventional crude oil will interact with the tar sands crude oil being transported from Alberta, and whether any operational or design changes will be necessary. For example, an SEIS should examine whether the currently-planned pumping stations will be sufficient to accommodate the additional sources and additional capacity; whether the different chemical composition of oil from the Bakken project shippers will present different threats and impacts in the event of a leak or rupture; whether the amount of diluent or heating that is required to move the crude through the pipeline will change; what additional facilities, operational plans, or emergency response plans will be necessary. In addition, because it is now required to offer oil transportation services to oil shippers in Montana and North Dakota, the Project will likely increase the amount of oil development in this region. This increase in domestic oil development is an indirect, connected, and cumulative action. As such, its environmental impacts must be evaluated, including but not limited to an increase in the use of hydraulic fracturing, increases in greenhouse gas (GHG) emissions, and its displacement of alternative fuels and renewable energy development and sales.

#### **B. TransCanada’s Withdrawal of its PHMSA Special Permit Application Constitutes a Significant New Circumstance and a Change in the Project**

In August 2010, TransCanada withdrew its application for a special permit from PHMSA and substantially changed the design parameters of the Project. At the time the DEIS was published, PHMSA was considering granting a special permit that would allow TransCanada to operate the Pipeline at a higher maximum operating capacity, or “design factor” for the steel

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*Management*, 387 F.3d 989, 998 (9th Cir. 2004) (“Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.”); *Wetlands Action Network v. U.S. Army Corps of Engineers*, 222 F.3d 1105, 1118 (9th Cir. 2000) (the requirement to analyze connected action prevents an agency from “dividing a project into multiple actions, each of which individually has an insignificant environmental impact, but which collectively have a substantial impact”).

<sup>17</sup> See *Save the Yaak Comm. v. Block*, 840 F.2d 714, 719 (9th Cir. 1988) (finding a road reconstruction, timber harvest, and feeder roads to all be “connected actions”).

employed. TransCanada withdrew its application but announced that it would still use the same pipe in the construction of the Project and reserved the right to apply for the permit at a future date.

TransCanada's withdrawal of the Special Permit application means that the pipeline will operate at the lower, federally approved pressure, meaning the daily operating capacity of the Pipeline will be significantly reduced. The DEIS analyzes an initial capacity of 700,000 bpd and an ultimate capacity of 900,000 bpd.<sup>18</sup> Without the special permit, the maximum capacity is now dramatically reduced. This reduction in capacity constitutes a substantial change in the Project requiring a supplemental EIS.<sup>19</sup>

### **III. DOS MUST PREPARE A SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT BECAUSE THERE IS SIGNIFICANT NEW INFORMATION AND CIRCUMSTANCES**

DOS must prepare an SEIS for the Project to address significant new information and circumstances. Significant new information has arisen and changed circumstances have occurred concerning DilBit pipeline accident risks; a Federal investigation into TransCanada's procurement of defective steel for the Keystone Pipeline; the Project's impact on the endangered American burying beetle; and new information on increased susceptibility to wildlife affected by the Deepwater Horizon oil spill.

#### **A. The Kalamazoo River Spill and Other Recent Pipeline Spills Constitute Significant New Information and Circumstances Regarding the Inadequacies of the DEIS Spill and Response Analysis**

A pipeline spill of over one million gallons of diluted bitumen (DilBit) into the Kalamazoo River in Michigan on July 27, 2010 has exposed the challenges of transporting highly corrosive, acidic and potentially unstable DilBit through pipelines. The Kalamazoo spill and a string of other pipeline accidents have also highlighted major errors in the DEIS's oil spill and emergency response analysis, and displayed a need for further analysis in an SEIS.

The Kalamazoo River spill provides new information that casts strong doubt on assumptions the DEIS made regarding spill detection and response. DilBit flowing through pipelines can produce a phenomenon called "column separation" which occurs as its natural gas condensate component evaporates within the pipeline, forming a bubble that impedes the flow of oil.<sup>20</sup> Column separation and pipeline leaks present similar signals to pipeline Supervisory Control and Data Acquisition (SCADA) computer monitoring systems.<sup>21</sup> During the Kalamazoo

<sup>18</sup> DEIS, ES-2.

<sup>19</sup> See *Commonwealth of Mass. v. Watt*, 716 F.2d at 951, (finding a substantial change in the potential environmental impacts of an offshore lease when the agency reduced the amount of oil expected to be discovered).

<sup>20</sup> Matthew McClearn, Enbridge: Under Pressure – The untold story of Enbridge's worst spill and the unsettling truth about pipeline safety, *Canadian Business*, Dec. 6, 2010, [http://www.canadianbusiness.com/markets/commodities/article.jsp?content=20101206\\_10023\\_10023](http://www.canadianbusiness.com/markets/commodities/article.jsp?content=20101206_10023_10023) (last visited Dec. 15, 2010).

<sup>21</sup> *Id.*

spill, the Enbridge pipeline gushed for over twelve hours as control room operators inaccurately interpreted the pipeline's monitoring data to indicate column separation.<sup>22</sup> This lengthy detection and response time constitutes new information regarding vulnerabilities in monitoring and spill response systems in DilBit pipelines and requires the preparation of an SEIS.

The DEIS assumes that the Project's SCADA monitoring system will alert operators to abnormal operating conditions, including spills or leaks.<sup>23</sup> The DEIS does not account for the tendency of DilBit pipelines to give false positives,<sup>24</sup> making interpretation of SCADA data and discovery of leaks difficult. The DEIS does not contain sufficient information regarding the Project's leak detection system to instill confidence that SCADA can reliably identify pipeline ruptures like the one which occurred in Michigan.

The DEIS pipeline incident frequency assessment for the Project is based on data which significantly underestimates the risk of spills from the Project. The DEIS bases its baseline spill risk assessment on historical data from the U.S. hazardous liquid pipeline system.<sup>25</sup> However, the majority of the U.S. hazardous liquid pipeline system transports conventional crude. Pipelines that transport highly corrosive DilBit have a higher risk of internal corrosion and over-pressure. For example, Alberta's hazardous liquid system, which carries a high proportion of diluted bitumen, had over four times as many reportable incidents per mile as the U.S. pipeline system between 1990 and 2005.<sup>26</sup> By basing the risk of spills on the existing U.S. conventional

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<sup>22</sup> *Id.*; Richard Kuprewicz, quoted in the Michigan Messenger, "Pipeline spill underlies fears of new tar sands development," Aug. 10, 2010, <http://michiganmessenger.com/40744/pipeline-spill-underlines-fears-of-new-tar-sands-development> (last visited Dec. 15, 2010) (stating that the viscosity of tar sands and the use of diluents create frequent pressure warnings in pipeline monitoring systems, false positives that can make it more difficult to detect a real pressure problem in the pipe which can indicate a leak).

<sup>23</sup> DEIS, 3.13-27.

<sup>24</sup> Matthew McClearn, Enbridge: Under Pressure – The untold story of Enbridge's worst spill and the unsettling truth about pipeline safety, *Canadian Business*, Dec. 6, 2010, [http://www.canadianbusiness.com/markets/commodities/article.jsp?content=20101206\\_10023\\_10023](http://www.canadianbusiness.com/markets/commodities/article.jsp?content=20101206_10023_10023) (last visited Dec. 15, 2010), (DilBit causes false positives when the pressure inside the pipeline drops below the pressure at which the natural gas condensate evaporates. Called "column separation" or "slack line" by the industry, the resulting bubble can impede the flow of oil. Column separation and a pipeline leak generate similar signals to a SCADA system.).

<sup>25</sup> DEIS, 3.13-7 - 3.13-14.

<sup>26</sup> Alberta Energy and Utilities Board, Pipeline Performance in Alberta, 1990-2005, April 2007, <http://www.ercb.ca/docs/documents/reports/r2007-a.pdf> (last visited Dec. 15, 2010), (Hazardous liquid pipelines include multiphase, crude oil and other product pipelines and exclude natural gas, sour gas and water pipelines). Alberta's hazardous liquid pipeline system included 81,917 km of operating pipelines as of December 31, 2005 (38,536 km multiphase, 28,479 km other products and 14,902 km crude oil, pg. 9). During the time between 1990 and 2005 there were 5333 reported hazardous liquid incidents (multiphase pipelines had 4726, (pg. 28), crude oil pipelines had 411 (pg. 30), otherproduct had 196 (pg. 38)). This was 356 incidents per year in a 81,917 km system, which is a rate of 699 incidents per 100,000 miles of pipeline. It should be noted that this analysis understates the case, as the Alberta pipeline system was smaller than 81,917 km during most of this time. The United States onshore hazardous liquid system had 3,763 reported incidents during that period (PHMSA Pipeline Mileage and Incidents Reports, [http://primis.phmsa.dot.gov/comm/reports/safety/AllPSI.html?nocache=5046#\\_liquid](http://primis.phmsa.dot.gov/comm/reports/safety/AllPSI.html?nocache=5046#_liquid) (last visited Dec. 15, 2010)). This is a rate of 139 incidents per year per 100,000 miles in a 180,000 mile system (Congressional Research Service, Pipeline Security: Overview of Federal Activities and Current Policy

crude oil pipeline system, the DEIS significantly underestimates the Project's potential spill frequency.

The DEIS also reduces the baseline spill frequency for the Project and assumes fewer spills than PHMSA's U.S. pipeline average, reasoning that current pipeline construction and operational technologies reduce the frequency.<sup>27</sup> While pipeline age is an important parameter of spill risk in the U.S., pipeline incident data from Alberta suggests that the chemical properties of the petroleum product are a more important indicator. Despite being at least twenty years younger on average, the largely-DilBit Alberta pipeline system has four times as many pipeline incidents per mile as the U. S. system. The DEIS should have increased the Project's baseline spill frequency to account for the greater frequency of spills in Alberta's newer system.

For example, the DEIS estimates that there will be 2.2 spills in the Keystone XL pipeline over 10 years.<sup>28</sup> However, TransCanada's Keystone I pipeline has already spilled at least four times<sup>29</sup> in the six months it has been in operation<sup>30</sup> and the EIS for that project predicted between 1.4 and 1.9 spills over 10 years.<sup>31</sup> Several of the Keystone I spills have occurred since the Keystone XL DEIS was published in April. This constitutes new information about spill frequency and exposes the flawed spill frequency projections in the DEIS.

The DEIS uses hazardous liquid pipeline data from PHMSA to estimate risk of corrosion.<sup>32</sup> It then attributes a disproportionate frequency of corrosion-related incidents to pre-1950 pipelines. Because the rate of internal corrosion in the Alberta system is twenty-five times greater than the older U.S. system, the DEIS significantly underreports the risk of pipeline corrosion related failure for the Project.<sup>33</sup> While the cause of this disparity has not been studied,

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Issues, 2004, CRS-2, <http://www.fas.org/sgp/crs/RL31990.pdf> (last visited Dec. 15, 2010)). At a rate of 699 incidents per 100,000 miles, Alberta's system had an incident rate greater than four times that of the United States at 139 incidents per 100,000 miles.

<sup>27</sup> DEIS, 3.13-13.

<sup>28</sup> DEIS, 3.13-15.

<sup>29</sup> Plains Justice, Another Keystone Pipeline Leak in Nebraska, Dec. 7, 2010

(<http://tarsandspipelines.wordpress.com/2010/12/07/another-keystone-pipeline-leak-in-nebraska/> (last visited Dec. 15, 2010)).

<sup>30</sup> Ken Newton, St. Joseph News-Press, MO, Oil Flows Through Keystone, June 9, 2010,

([http://www.downstreamtoday.com/news/article.aspx?a\\_id=22938&AspxAutoDetecCookieSupport=1](http://www.downstreamtoday.com/news/article.aspx?a_id=22938&AspxAutoDetecCookieSupport=1) (last visited Dec. 15, 2010)) (the Keystone pipeline began operation on June 9, 2010).

<sup>31</sup> Keystone FEIS, 3.13-10.

<sup>32</sup> DEIS, 3.13-11.

<sup>33</sup> Internal corrosion caused 8.5% of the significant incidents on the United States' onshore hazardous liquid pipeline system between 1990 and 2010. (PHMSA, Significant Pipeline Incidents by Cause, National Hazardous Liquid Onshore: Significant Incident Details: 1990-2009, [http://primis.phmsa.dot.gov/comm/reports/safety/SigPSIDet\\_1990\\_2009\\_US.html?nocache=973#\\_liquid\\_on](http://primis.phmsa.dot.gov/comm/reports/safety/SigPSIDet_1990_2009_US.html?nocache=973#_liquid_on) (last visited Dec. 15, 2010)). Internal corrosion caused 2633 of the 5333 reported incidents on the Alberta hazardous pipeline system, including 2521 incidents for multiphase (pg. 28), 102 incidents for crude oil pipelines (pg. 30), and 8 other products (pg. 38) (Alberta Energy and Utilities Board, Pipeline Performance in Alberta, 1990-2005, April 2007, pg. 19, <http://www.ercb.ca/docs/documents/reports/r2007-a.pdf> (last visited Dec. 15, 2010)). Of 699 incidents per 100,000 miles of Alberta pipelines, 49%, or 343 incidents per 100,000 miles, were caused by internal



these pipeline systems may be distinguished by the product they transport. Highly corrosive DilBit derived from unconventional tar sands comprises as much as 70% of the product produced and transported in Alberta.<sup>34</sup> By comparison, DilBit currently comprises less than 3% of liquid fuels consumed in the United States.<sup>35</sup>

DOS should prepare an SEIS that considers the specific risks of a DilBit pipeline and allow for public review and full incorporation of these critical issues in the deliberations about whether to permit the Project.

#### **B. There Is New Information Showing Possible Use of Defective Steel for the Keystone Pipeline**

PHMSA is currently investigating the possible use of defective steel in the construction of Keystone I pipeline. Reports indicate that the Keystone I pipeline may have stretched, potentially thinning the pipeline below the regulatory limits set by the United States<sup>36</sup> in at least 47 places; PHMSA has ordered more extensive testing and has ordered TransCanada to dig up 10 sections of the pipeline.<sup>37</sup> In response to this new information, an SEIS is necessary to evaluate TransCanada's quality control system for material acquisitions.

#### **C. Significant New Information Shows that the Project Will Likely Adversely Affect the American Burying Beetle, a Federally Listed Endangered Species**

Both TransCanada's application materials and the DEIS conclude that the Project is "not likely to adversely affect" the American burying beetle, which is a listed species under the

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corrosion. This can be compared to the United States system, where 8.5% of 139 incidents per 100,000 miles, or 12 incidents, were caused by internal corrosion. Alberta's 343 incidents is 28.6 times the 12 incident rate of internal corrosion failure in the US system.

<sup>34</sup> In 2009, over 70% of Alberta's crude oil production was derived from unconventional tar sands (State of Alberta, Alberta's Energy Industry Overview 2009, [http://www.energy.alberta.ca/org/pdfs/Alberta\\_Energy\\_Overview.pdf](http://www.energy.alberta.ca/org/pdfs/Alberta_Energy_Overview.pdf) (last visited Dec. 15, 2010)), 765,000 bpd was transported as DilBit to be upgraded into Syncrude in Canada (ERCB, Alberta's Energy Reserves 2009, 2-24, [http://www.ercb.ca/docs/products/STs/st98\\_current.pdf](http://www.ercb.ca/docs/products/STs/st98_current.pdf) (last visited Dec. 15, 2010)) and 550,000 bpd was exported to the United States as un-upgraded DilBit (National Energy Board, Estimated Canadian Crude Oil Exports by Type and Destination, 2010 Q1, [http://www.neb-one.gc.ca/clf-nsi/rnrgynfmrtn/sttstc/crdlndptrlmpdct/2010/stmtdcndncrdlxprtpdstnt2010\\_q1.xls](http://www.neb-one.gc.ca/clf-nsi/rnrgynfmrtn/sttstc/crdlndptrlmpdct/2010/stmtdcndncrdlxprtpdstnt2010_q1.xls) (last visited Dec. 15, 2010)).

<sup>35</sup> The United States system handled 19.1 million bpd in 2010 (U.S. Energy Information Administration, Short Term Energy Outlook, Oct. 7, 2010, <http://www.eia.doe.gov/emeu/steo/pub/contents.html> (last visited Dec. 15, 2010)), of which 550,000 bpd, or less than 3%, was DilBit (National Energy Board, Estimated Canadian Crude Oil Exports by Type and Destination, 2010 Q1, [http://www.neb-one.gc.ca/clf-nsi/rnrgynfmrtn/sttstc/crdlndptrlmpdct/2010/stmtdcndncrdlxprtpdstnt2010\\_q1.xls](http://www.neb-one.gc.ca/clf-nsi/rnrgynfmrtn/sttstc/crdlndptrlmpdct/2010/stmtdcndncrdlxprtpdstnt2010_q1.xls) (last visited Dec. 15, 2010)).

<sup>36</sup> 49 CFR § 195.106.

<sup>37</sup> Phillip O'Connor, Faulty pipe checked for in TransCanada line to U.S., The Province, Dec. 10, 2010, <http://www.theprovince.com/opinion/Faulty+pipe+checked+TransCanada+line/3955809/story.html> (last visited Dec. 15, 2010).

Endangered Species Act (ESA).<sup>38</sup> The DEIS based this conclusion on a survey of the affected habitat and mitigation measures proposed by TransCanada.<sup>39</sup>

Subsequent to the release of the DEIS, TransCanada released a Biological Assessment where it announced for the first time that the Project “may affect and is likely to adversely affect” the beetle.<sup>40</sup> As a result, formal consultation has been initiated with the United States Fish and Wildlife Service (FWS) regarding potential impacts to the beetle.<sup>41</sup>

The presence of this new information indicating adverse effects on an endangered species triggers the need for an SEIS.<sup>42</sup> DOS should prepare the SEIS only after it concludes its consultation with FWS so that any resulting changes to the project as a result of the consultation are evaluated in the SEIS and the public is given a full opportunity to comment on those changes.

#### **D. There Is New Information Regarding the Project’s Impacts on Species Affected by the Deepwater Horizon Spill**

An SEIS is necessary to analyze changed status of resources affected by the Deepwater Horizon Spill when those same resources would be affected by the Project. For example, the DEIS’s discussion of the status of Brown Pelicans references 1995 US Fish and Wildlife Service data and concludes that the proposed project would have no effect on the Brown Pelican.<sup>43</sup> The analysis has become outdated after the Deepwater Horizon spill, which significantly affected the population and habitat of this species.<sup>44</sup>

#### **IV. A SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT SHOULD BE PREPARED TO ADDRESS THE INADEQUACIES OF THE DEIS IN FURTHERANCE OF THE PURPOSES OF NEPA**

Following the close of the public comment period in July 2010, the Department of Energy (DOE), the Environmental Protection Agency (EPA), and the environmental community

<sup>38</sup> Keystone XL Environmental Report p. 3-24 (Nov. 2008); DEIS, 3.8-35, Table 3.8.1-1.

<sup>39</sup> *Id.*

<sup>40</sup> Keystone XL Project Applicant – Prepared Biological Assessment, pp. 1-6, 3-24, Table 1.3-1.

<sup>41</sup> Keystone XL Project Applicant – Prepared Biological Assessment, pp. 1-3.

<sup>42</sup> 40 C.F.R. § 1508.27(b) (1978); *Natural Res. Def. Council v. Lujan*, 768 F. Supp. 870, 886 (D.D.C. 1991). Impacts to endangered species are one of the indicators of “significance” defined in these regulations. Accordingly, several courts have held that where new information comes to light regarding endangered or sensitive species, an SEIS must be prepared. *Portland Audubon Society v. Babbitt*, 998 F.2d 705 (9th Cir. 1993) (SEIS was required where there was a substantial change in the scientific literature regarding survival of the northern spotted owl); *Sierra Club v. Bosworth*, 465 F. Supp. 2d 931, 936 (N.D. Cal. 2006) (finding that Forest Service has failed to conduct a proper “hard look” at the significant new information regarding the impacts of the timber projects on the Pacific fisher); *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 558 (9th Cir. 2000) (Forest Service violated NEPA requirements because it failed timely to prepare an SEIS in light of seven new sensitive species designations).

<sup>43</sup> DEIS, p. 3.8-8.

<sup>44</sup> U.S. Fish and Wildlife Service Deepwater Horizon Spill Response, <http://www.fws.gov/home/dhoilspill/collectionreports.html> (last visited Dec. 15, 2010).

identified significant deficiencies in the DEIS. Correcting these deficiencies will require significant new analysis and the incorporation of high quality and accurate information regarding the Project's impacts. It would further the purposes of NEPA to allow public scrutiny of these substantial changes – outlined in this document – in an SEIS. Public scrutiny of environmental decision making, informed by high quality and accurate information, is essential to the purposes of NEPA.<sup>45</sup>

DOE and EPA noted significant defects in the needs assessment for the Project.<sup>46</sup> An SEIS is necessary to conduct a further analysis of the purported need for this pipeline in consultation with the DOE, which is a coordinating agency in the NEPA process. In July of 2010, DOE strongly criticized the DEIS. Its comments described major flaws in the demand assessment for the Pipeline, such as: (a) the DEIS based its assessment of worldwide oil demand on a misinterpretation of EIA reports; (b) provided inaccurate and conflicting estimates of current pipeline capacity available to transport Western Canadian Sedimentary Basin (WCSB) crude into the United States; (c) lacked an assessment of the Pipeline's projected impact on crude supply between PADDs; and (d) provided an incomplete analysis of the Pipeline's projected effect on price stability in the U.S. crude oil market.

DOS should work closely with DOE in the preparation of the SEIS. In addition to being a cooperating agency in the NEPA process, DOE is an agency with vast experience in matters of domestic energy policy and is uniquely suited to evaluate the Project's expected role in the energy market. DOE can assist DOS in evaluating whether the Pipeline would open up an international market for tar sands oil and compete with other pipelines for supply. The DOE analysis should be incorporated by reference or provided in an appendix to the SEIS analysis.

EPA and the environmental community submitted comments noting numerous defects in the DEIS.<sup>47</sup> Based on the analysis outlined in their comment letters, an SEIS should correct the following deficiencies:

- **The DEIS does not consider the unique risks associated with DilBit pipelines.**<sup>48</sup> The DEIS uses measures that substantially underestimate the risk of spills from the project, the volume of potential DilBit spills, the potential impacts of DilBit to the environment and water quality, and the unique challenges posed in cleaning up these spills. DilBit may be distinguished from conventional crude by its greater corrosivity, acidity,

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<sup>45</sup> 40 CFR § 1500.1(b)

<sup>46</sup> Department of Energy, Comments to the Keystone XL DEIS, July 2, 2010, <http://www.sierraclub.org/environmentallaw/tarsands/pipeline-keystone-xl/state-dept-permit-process/DOE%20Comments%20on%20DEIS%2010-7-2.pdf> (last visited Dec. 15, 2010); Environmental Protection Agency, Comments to the Keystone XL DEIS, July 16, 2010, <http://www.sierraclub.org/environmentallaw/tarsands/pipeline-keystone-xl/state-dept-permit-process/EPA%20Comments%20on%20DEIS%2010-7-16.pdf> (last visited Dec. 15, 2010).

<sup>47</sup> EPA, Comments to the Keystone XL DEIS; Sierra Club, et. al., Public Comments on the TransCanada Keystone XL Pipeline Draft Environmental Impact Statement, July 2, 2010, <http://www.sierraclub.org/environmentallaw/tarsands/pipeline-keystone-xl/state-dept-permit-process/KXL%20DEIS%20Comments%207-2-10.pdf> (last visited Dec. 15, 2010).

<sup>48</sup> Keystone XL DEIS, <http://keystonepipeline-xl.state.gov> (last visited Dec. 15, 2010).

viscosity, volatility, instability and toxicity. These factors present the risk of substantial environmental impacts that are not considered in the DEIS.

The DEIS does not assess the environmental impacts of a DilBit crude oil spill. While the DEIS notes the importance of specific gravity, viscosity, pour point, volatility, toxicity, solubility and persistence in the environment in determining the impacts of crude oil spills,<sup>49</sup> it avoids analyzing these attributes for DilBit by considering it similar enough to be treated as a conventional crude oil.<sup>50</sup> DilBit differs significantly from conventional crude in these attributes. It is significantly more corrosive and twenty to thirty times more viscous than conventional crude. Its condensate components are more volatile than conventional crude while its bitumen component, with an API gravity of 7-9, is denser. Because the Project is a dedicated DilBit pipeline, the attributes of DilBit must be specifically considered to fully assess the Project's environmental impact.

The DEIS assumes that the water quality effects of most spills on larger lakes would be eliminated once the oil slick is removed.<sup>51</sup> Its impact analysis is based on numerous studies of conventional crude oil spills and therefore do not address DilBit's distinguishing properties.<sup>52</sup> The bitumen component of DilBit would be expected to sink into the water column and accumulate on the underwater lake bed, where cleanup would be difficult. The Project's countermeasures to contain and remove DilBit released in a water resource call for sorbent booms, socks, and/or pads.<sup>53</sup> These measures are typically used for spills of conventional crudes that are less dense than water. They do not address heavy bitumen that would sink below the water's surface.<sup>54</sup>

The DEIS underestimates the effect of a DilBit spill on freshwater fish, macro-invertebrates, and other aquatic organisms.<sup>55</sup> By equating DilBit to conventional crude, the DEIS assumes that even a large spill would result in low concentrations of oil in the water column. This is true with conventional crude, as it is less dense than water and floats. In DilBit, the bitumen component is denser than water and would be expected to sink<sup>56</sup> in the water column. This could have significant impacts on fish and plankton<sup>57</sup> in the water column as well as all organisms associated with river and creek beds.<sup>58</sup>

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<sup>49</sup> DEIS, 3.13-19.

<sup>50</sup> DEIS, 3.13-19.

<sup>51</sup> DEIS, 3.13-41.

<sup>52</sup> DEIS, 3.13-46.

<sup>53</sup> DEIS, Appendix C, Section 4. Spill Control and Countermeasures.

<sup>54</sup> Athabasca bitumen has an API gravity of 7.7-9, which makes it heavier than fresh water, with an API gravity of 10. *See also* Cekirge et al., 1997, Orimulsion spill modeling in marine environments, [http://www.sciencedirect.com/science?\\_ob=ArticleURL&\\_udi=B6V0V-3SNVJ0R-18&\\_user=10&\\_coverDate=06%2F30%2F1997&\\_rdoc=1&\\_fmt=high&\\_orig=search&\\_origin=search&\\_sort=d&\\_docanchor=&\\_view=c&\\_searchStrId=1579287273&\\_rerunOrigin=google&\\_acct=C000050221&\\_version=1&\\_urlVersion=0&\\_userid=10&md5=b1864e2341951676438a20bf31ea29fa&searchtype=a](http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6V0V-3SNVJ0R-18&_user=10&_coverDate=06%2F30%2F1997&_rdoc=1&_fmt=high&_orig=search&_origin=search&_sort=d&_docanchor=&_view=c&_searchStrId=1579287273&_rerunOrigin=google&_acct=C000050221&_version=1&_urlVersion=0&_userid=10&md5=b1864e2341951676438a20bf31ea29fa&searchtype=a) (last visited Dec. 15, 2010) (modeling a blend of bitumen and emulsified water in a marine environment. In fresh water, the bitumen sinks, though energy in the water can remix bitumen particles into the water column).

<sup>55</sup> DEIS, 3.13-46.

<sup>56</sup> *Id.*

These legitimate safety concerns associated with DilBit pipelines carry a heightened risk of environmental impacts that were not considered in the DEIS. An SEIS would further the purposes of NEPA by fully informing decision makers and the public about the risks of DilBit and allowing the opportunity to implement mitigation measures.

- **The DEIS does not adequately address the Project's climate change impacts.** The few pages that the DEIS devotes to the impacts of greenhouse gas emissions (GHG) fail to comprehensively describe or quantify the indirect emissions of GHGs and does not analyze the local, regional, or global environmental impacts of greenhouse gas emissions from the Project and related facilities. The DEIS is also flawed because it fails to consider the economic effects of the impacts of greenhouse gas emissions from the project. DOS is required to analyze both the effects of emissions and consider potential alternatives to reduce those emissions.<sup>59</sup>
- **The DEIS does not adequately address the impacts of the Project on wetlands and water resources.** The overall lack of information on impacts, avoidance, mitigation measures and justification for adopted alternatives in the DEIS violates both the Clean Water Act (CWA) and NEPA. The DEIS does not take into account the impacts of climate change on water resources; the potential effects of the Project on mercury levels in waters and acid rain; provides inadequate mitigation measures; fails to assess impacts to wetlands and water resources from pump stations, mainline valves, roads and other associated developments; and fails to adequately analyze the impacts of refineries. It also provides inadequate analysis of releases of drilling fluid and drilling fluid additives, and of impacts to groundwater and surface water from an oil spill or leak. The DEIS also does not properly account for the fact that many impacted wetlands and water bodies are

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<sup>57</sup> Jerry Neff, *An Oil Spill in an Illinois Lake: Ecological and Human Health Assessment*, 1991, pg. 7, <http://www.iosc.org/papers/01477.pdf> (last visited Dec. 15, 2010) (noting the relationship between oil concentration in the water column and toxicity to marine plants and animals).

<sup>58</sup> *Id.*

<sup>59</sup> In *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508 (9th Cir. 2007), the original EIS for a CAFE standards rulemaking did provide quantification of GHG emissions. NHTSA argued that more was not required because the standard would slightly reduce the rate of emissions. The Ninth Circuit of Appeals asserted that the agency had a duty to analyze the effects of the emissions and analyze alternative proposed by EDF that would have reduced emissions more significantly rather than simply stating emission projections. *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520 (8th Cir. 2003) involved a Surface Transportation Board decision about whether to approve the construction and upgrade of a railroad track, the sole purpose of which was to transport low sulfur coal to the Midwest. The court held that the agency had to analyze the effects, rather than just the quantity, of emissions of the transport, increased availability and utilization of Power River Basin coal. And in *Border Power Plant Working Group v. Department of Energy*, the Department of Energy's environmental assessment supporting a decision regarding a Presidential Permit was invalidated for failure to analyze the effects of GHG emissions that would come from two export turbines in one power complex and another power plant being built in Mexico for the purpose of transmitting power to the United States.

not being regulated under CWA by the Corps and therefore may not receive mitigation for impacts.

- **The DEIS fails to adequately address environmental justice impacts on communities (air and water).** The DEIS makes no effort to assess the environmental justice implications of the substantial increases in pollution likely to occur in communities around refineries. The DEIS fails to analyze the refinery related impacts on the minority and low-income populations in Harris County, TX and Jefferson County, TX. It also fails to evaluate the impacts of the Project on affected minority and low-income communities living outside the pipeline corridor.
- **The DEIS fails to adequately address impacts on migratory birds.** The DEIS does not support its claim that the Project “may affect” but is “not likely to adversely affect” the Whooping Crane and the Piping Plover with analysis by independent scientists or expert agencies. The DEIS also fails to analyze how the Project’s impacts on water supply, compounded by climate change, will affect migratory birds.
- **The DEIS fails to adequately analyze refinery emissions.** The analysis set forth in the DEIS concerning cumulative impacts associated with petroleum refining is insufficient in four major respects. First, it impermissibly relies on the Clean Air Act (CAA) and CWA permitting process at individual refineries to address environmental issues associated with the processing of product delivered via the Project rather than presenting independent analysis, which is both required by law and central to the purpose of NEPA environmental review. Second, the DEIS fails to adequately analyze a variety of possible supply and demand scenarios of clean energy and different grades of crude oil. Third, the analysis assumes without basis a wide distribution of the product delivered by the Project to refineries throughout PADD II and PADD III, and based on this assumption declines to provide any analysis of region-specific impacts on air quality.
- **The DEIS fails to assess the Project’s transboundary impacts.** The DEIS states that DOS has no obligation to assess the transboundary impacts of the Project.<sup>60</sup> The transboundary impacts of the Pipeline include transboundary greenhouse gas emissions and impacts to migratory birds.

The DEIS contains a very cursory analysis of impacts in Canada associated with the XL Pipeline, without any analysis of transboundary greenhouse gas or bird impacts.<sup>61</sup> Several recent developments in the law indicate that the EIS should analyze transboundary impacts. DOS should remedy this error in an SEIS.

In a February 2010 memo to the heads of federal departments and agencies, CEQ Chair Nancy Sutley affirmed that the requirements of NEPA are applicable to greenhouse gas

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<sup>60</sup> DEIS, 3.14-42.

<sup>61</sup> DEIS, 3.14-42 et seq.

emissions and climate change impacts.<sup>62</sup> A draft of this guidance was released by CEQ, 75 Fed. Reg. 8046 (Feb. 23, 2010)). The final CEQ GHG Guidance is expected soon.

The pending CEQ GHG Guidance must be considered in conjunction with an earlier CEQ guidance on the obligation of federal agencies to consider transboundary impacts generally.<sup>63</sup> The Transboundary Guidance directs agencies to include “an analysis of the reasonably foreseeable transboundary effects of proposed actions in the United States.”<sup>64</sup>

- **The DEIS fails to adequately identify and analyze mitigation measures.** The DEIS fails to consider practicable system alternatives which would have less impact on water resources, including the use of existing pipeline capacity. In *Robertson v. Methow Valley Citizens*,<sup>65</sup> the court noted that NEPA and its implementing regulations require that an EIS contain a detailed discussion of possible mitigation measures, as omitting a reasonably competent discussion of possible mitigation measures would undermine the “action forcing” function of NEPA.

The environmental community submitted comments noting additional deficiencies in the DEIS.<sup>66</sup> An SEIS is necessary to address the following defects:

- **The DEIS fails to address the environmental consequences of abandonment and mitigation thereof.** The DEIS contains no discussion of impacts, alternatives, or mitigation of pipeline abandonment. The DEIS only states that Applicant will submit abandonment plans at the time of abandonment, and that such plans would be approved at that time by regulating entities, if any. The DOS should supplement the DEIS so that citizens may

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<sup>62</sup> CEQ, Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions, Feb. 18, 2010, [http://ceq.hss.doe.gov/nepa/regs/Consideration\\_of\\_Effects\\_of\\_GHG\\_Draft\\_NEPA\\_Guidance\\_FINAL\\_02182010.pdf](http://ceq.hss.doe.gov/nepa/regs/Consideration_of_Effects_of_GHG_Draft_NEPA_Guidance_FINAL_02182010.pdf) (last visited Dec. 15, 2010).

<sup>63</sup> See CEQ, Memorandum to Heads of Agencies on the Application of the National Environmental Policy Act to Proposed Federal Actions in the United States with Transboundary Effects (July 1, 1997) (CEQ Transboundary Guidance).

<sup>64</sup> *Id.* In *Government of the Province of Manitoba v. Salazar*, 691 F.Supp.2d 37, 51 (D.D.C. 2010), the court asserted that the Bureau of Reclamation was required to assess transboundary impacts of a large water project. The court noted that the Guidance was persuasive despite the Reclamation agency’s argument that it was non-binding. *Id.* n. 13. The Council on Environmental Quality “has determined that agencies must include analysis of reasonably foreseeable transboundary effects of proposed actions in their analysis of proposed actions in the United States.” Council on Environmental Quality Guidance on NEPA Analyses for Transboundary Impacts (July 1, 1997), available at <http://ceq.hss.doe.gov/nepa/regs/transguide.html> (last visited Dec. 15, 2010). This tracks the long standing direction of the Supreme Court that CEQ’s interpretation of NEPA deserves “substantial deference” from the lower courts. *Department of Transportation v. Public Citizen*, 541 U.S. 754 (2004); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989); *Andrus v. Sierra Club*, 442 U.S. 347 (1979).

<sup>65</sup> *Robertson v. Methow Valley Citizens Council*, 490 US 332, 1989 U.S. LEXIS 2160.

<sup>66</sup> *Sierra Club, et. al.*, Public Comments on the TransCanada Keystone XL Pipeline Draft Environmental Impact Statement, July 2, 2010, <http://www.sierraclub.org/environmentallaw/tarsands/pipeline-keystone-xl/state-dept-permit-process/KXL%20DEIS%20Comments%207-2-10.pdf> (last visited Dec. 15, 2010).

have an opportunity to comment on these impacts. A failure to provide an opportunity for comment would violate both NEPA and the Administrative Procedure Act.

- **The DEIS does not analyze alternatives that would avoid important aquifers.** The DEIS does not analyze alternatives that would avoid impacts to the Northern Great Plains Aquifer System, the Ogallala Aquifer, the Trinity Aquifer, the Texas Coastal Uplands Aquifer, and the Texas Coastal Lowlands Aquifer. The DEIS does not analyze the how geology, vegetation, soil composition and land use will affect spill impacts for aquifers. The DEIS also does not investigate the placement of shut-off valves or other possible mechanisms that could be used to protect aquifers from the effects of spills and leaks. This analysis is particularly important given new information suggesting higher risks of spill incidence for the project than was forecast by the DEIS.

## V. THE ISSUANCE OF A FINAL EIS WITH A COMMENT PERIOD IS INCONSISTENT WITH THE REQUIREMENTS AND PURPOSE OF NEPA

Issuance of a Final EIS (FEIS) with a comment period in lieu of an SEIS would not satisfy the requirements and purpose of NEPA. NEPA was enacted to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.”<sup>67</sup> It is essential that that environmental information is high quality and based upon “accurate scientific analysis, expert agency comments and public scrutiny.”<sup>68</sup>

Expert agency comments and public scrutiny is essential to implementing NEPA. Part of the NEPA process includes the public’s opportunity to understand the agency’s response to these comments. Even with a comment period, an FEIS will not allow informed public scrutiny of and input into the decision making process before a “decision is made and before actions are taken.”<sup>69</sup> Preparation of an SEIS is mandatory because all factors requiring this have been triggered. The Department should also take the opportunity when directing preparation of the mandatory SEIS to correct the significant deficiencies in the DEIS that have been identified above.

## VI. CONCLUSION

For the reasons outlined above, an SEIS is required to address new information and circumstances which substantially alter the Project’s impact and have arisen subsequent to the close of the DEIS comment period in July 2010. In such circumstances, NEPA regulations require the issuance of an SEIS.<sup>70</sup>

Furthermore, we believe that correcting the substantial deficiencies noted in the DEIS, outlined above and identified in comments during the public notice period, will substantially alter the EIS. DOS should issue an SEIS to further the intent and purposes of NEPA, which is to

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<sup>67</sup> 40 CFR § 1500.1(b)

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> 40 CFR § 1502.9 (1978).



ensure that high quality, accurate environmental information is available to public officials and citizens before actions are taken.<sup>71</sup>

Thank you for taking these concerns into consideration. If you have any questions about these comments, please contact us.

Respectfully submitted,



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Susan Casey-Lefkowitz  
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<sup>71</sup> 40 CFR § 1500.1(b)

CC

Cheryl Mills  
Counselor and Chief of Staff to the Secretary  
MillsCD@state.gov

Arturo Valenzuela  
Assistant Secretary, Western Hemisphere Affairs  
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David Goldwyn  
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Todd Stern  
Special Envoy on Climate  
SternTD@state.gov

Alexander W. Yuan  
Keystone XL Project Manager  
YuanAW@state.gov, xlpipelineproject@state.gov

**To:** Matt Bogoshian/DC/USEPA/US@EPA;Cliff Rader/DC/USEPA/US@EPA[]; liff Rader/DC/USEPA/US@EPA[]  
**Cc:** "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]  
**From:** "Barratt-Brown, Liz"  
**Sent:** Wed 2/16/2011 2:11:04 PM  
**Subject:** FW: {TSG} TransCanada casts doubt on Keystone pipeline  
<http://www.theglobeandmail.com/globe-investor/transcanada-casts-doubt-on-keystone-pipeline/article1907674/>  
[TRP-T](#)  
[TransCanada Corp. \(TRP-T\)](#)  
[1 Day](#)  
[5 Day](#)  
[1 Year](#)  
[View Larger Chart](#)  
[Add to Watchlist](#)  
[Hotspot](#)  
[TransCanada's Keystone Pipeline plans](#)

Hi Matt and Cliff,

Thanks again for the meeting yesterday. I wanted to pass along another interesting article that ran in the Globe and Mail yesterday. This is the first time that we have seen TC float the idea publically of only building the southern portion of the pipeline. Note reference to EPA. We can't underscore how important your role has been in reshaping this debate.

On that point, I had a brief but nice conversation with the Administrator last night and when I thanked her for EPA's work on the pipeline and said we'd been in to meet with you today, I am almost certain she said "we have only just started". Perhaps she was referencing taking on the Hill on EPA authority issues but she and I had been talking specifically about Keystone before she made that comment.

It may make sense for us to have a brief, more brass tacks conversation about the SEIS. We really didn't get into your views about how best to push State to do one, how you may be weighing in with legal arguments, what you hear the timing is, etc...It is sometimes hard to do this in a large meeting.

Thanks and have a great day!

Liz

<http://www.theglobeandmail.com/globe-investor/transcanada-casts-doubt-on-keystone-pipeline/article1907674/>

TransCanada Corp. (TRP-T37.80-0.01-0.03%) could break up its Keystone pipeline project, building only the leg that will deliver crude oil to the U.S. Gulf Coast, if it fails to win regulatory approval for its larger plan, which aims to expand Canadian oil exports to the United States.

The Calgary-based company expects to receive final approval from the U.S. State Department by the end of this year, but is encountering resistance from the Environmental Protection Agency and some members of Congress.

TransCanada Corp. (TRP-T)

37.80 -0.01 -0.03%

As of Feb 15, 2011 4:15

Range:

- 1 Day
- 5 Day
- 1 Year

[View Larger Chart](#)

[Add to Watchlist](#)

## INFOGRAPHIC

### TransCanada's Keystone Pipeline plans

Keystone is a massive, multibillion-dollar project that is being built in four stages. The first two, which bring Canadian crude to Cushing, Okla., and to Illinois, are complete. The third, a 700-kilometre pipeline from Cushing, Okla., to Port Arthur, Tex., is one that U.S. and Canadian producers are eager to see built, because it will give them greater access to the vast refinery hub in Texas and Louisiana.

The fourth phase is a 1,900-kilometre line from Alberta to Nebraska. Together, the third and four phases are known as Keystone XL.

In a conference call on Tuesday, TransCanada executives said approval for Keystone XL could be further delayed if the State Department requests a new environmental impact statement, as critics are demanding.

Costs for the overall Keystone project have ballooned to \$13-billion (U.S.) from \$12-billion, as the result of the higher Canadian dollar, higher-than-anticipated construction costs, and delays in regulatory approval for the final two phases of the four-phase project.

TransCanada wants to build the Keystone XL to expand export capacity from Canada and link the land-locked Cushing hub with the Gulf Coast, from which North American producers expect to push out imports from Mexico,

Venezuela and Saudi Arabia.

But the proposal has gotten bogged down in environmental debates in Washington over concerns about expanding oil sands production and potential threats to groundwater sources along the route.

In response to an analyst's question, Alex Pourbaix, TransCanada's president for oil pipelines and energy, said the company would consider proceeding with the Cushing-Texas leg on its own.

"That's obviously something we would consider," Mr. Pourbaix said. "Right now, we have put all of that together in the XL permit and we're very confident we're going to receive that permit. But in the incredibly unlikely event that we did not receive the presidential permit, we would consider decoupling it."

However, TransCanada chief executive officer Russ Girling quickly jumped in to defend the critical economic underpinning of the overall project. He said the Gulf Coast line – and another spur line connecting the prolific Bakken oil field to the Keystone network – may not be commercially viable if they are not part of the larger XL project.

Industry analysts say TransCanada can expect additional delays as differing factions within the Obama administration debate the environmental impacts versus energy security implications of the pipeline.

"In the interest of reducing U.S. energy dependence on the Middle East and elsewhere we see minimal risk that approval for the expansion will not be achieved," UBS analyst Chad Friess said in a research note.

However, a report prepared for the Department of Energy and submitted to the State Department said the Keystone XL project would create surplus pipeline capacity that would not be needed until 2020 at the earliest, and perhaps not until 2025 or 2030.

TransCanada reported its fourth quarter and year-end 2010 results on Tuesday, with annual profit rising to \$1.36-billion from \$1.33-billion. It has increased its dividend for the 11th consecutive year.

The company also took a \$127-million writedown on a loan made to the Aboriginal Pipeline Group in support of the Mackenzie gas pipeline project, citing "uncertainties" about the commercial viability of the project and whether the loans would ever be repaid.

Mr. Girling said TransCanada remains optimistic that both the Mackenzie project and the Alaska gas pipeline – which it is leading – will eventually be needed to bring natural gas supplies to North American markets.

Liz Barratt-Brown

Senior Attorney

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<http://switchboard.nrdc.org/blogs/lizbb/>

**To:** Benjamin Hengst/DC/USEPA/US@EPA[]  
**Cc:** "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]  
**From:** "Barratt-Brown, Liz"  
**Sent:** Tue 2/22/2011 8:47:48 PM  
**Subject:** Controversy growing as State revises Keystone XL tar sands pipeline EIS  
[released a report](#)  
[submitted comments](#)  
[fireball](#)  
[http://switchboard.nrdc.org/blogs/sclefkowitz/it\\_is\\_time\\_for\\_the\\_us\\_to\\_regul.html](http://switchboard.nrdc.org/blogs/sclefkowitz/it_is_time_for_the_us_to_regul.html)  
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[asked to address](#)

Dear Ben:

It was great to see you at the meeting at EPA last week.

As you know, we expect the State Department to make a decision soon about whether and how they will respond to the many issues regarding their Environmental Impact Statement (EIS) for the Keystone XL tar sands pipeline proposal. As the State Department considers its response, controversy over the pipeline grows.

Last week, NRDC released a report and called on the government to put the Keystone XL tar sands pipeline permit on hold and submitted comments to the agency at the Department of Transportation responsible for pipeline safety. The recent pipeline ruptures in the Gulf, the Kalamazoo River, and Northern Ontario, Canada, where a TransCanada natural gas pipeline sent a fireball hundreds of feet in the air this weekend, require authorities to focus on whether pipelines are adequately regulated. To read more, see [http://switchboard.nrdc.org/blogs/sclefkowitz/it\\_is\\_time\\_for\\_the\\_us\\_to\\_regul.html](http://switchboard.nrdc.org/blogs/sclefkowitz/it_is_time_for_the_us_to_regul.html).

In an apparent bid to regain support for the pipeline proposal in the midst of this controversy, TransCanada contorted a recent report by the Department of Energy (DOE) to argue that the Keystone XL tar sands pipeline would reduce U.S. dependence on Middle Eastern oil. But what the DOE report found was that reducing demand is key to reducing our demand for Middle Eastern oil and that the Keystone XL pipeline would not have any significant impact on oil imports. To read more, see [http://switchboard.nrdc.org/blogs/lizbb/as\\_transcanada\\_pushes\\_out\\_a\\_fa.html](http://switchboard.nrdc.org/blogs/lizbb/as_transcanada_pushes_out_a_fa.html).

Among the key issues the State Department has been asked to address in a supplemental or revised draft EIS include:

- The purpose and need for the pipeline and consideration of alternatives
- The greenhouse gas impacts in producing and refining tar sands oil, especially in already polluted minority communities
- The pipeline safety and spill response concerns of moving tar sands oil through America's heartland
- The routing of the pipeline through the Ogallala aquifer and consideration of alternative routings
- The impact on endangered species, migratory birds and wetland habitats
- The connection to Bakken oil production

All best,

Liz and Susan

Liz Barratt-Brown

Senior Attorney

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**To:** Matt Bogoshian/DC/USEPA/US@EPA;Cliff Rader/DC/USEPA/US@EPA[]; liff Rader/DC/USEPA/US@EPA[]  
**Cc:** "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]  
**From:** "Barratt-Brown, Liz"  
**Sent:** Tue 2/22/2011 8:46:33 PM  
**Subject:** Controversy growing as State revises Keystone XL tar sands pipeline EIS  
released a report  
submitted comments  
fireball  
[http://switchboard.nrdc.org/blogs/sclefkowitz/it\\_is\\_time\\_for\\_the\\_us\\_to\\_regul.html](http://switchboard.nrdc.org/blogs/sclefkowitz/it_is_time_for_the_us_to_regul.html)  
recent report  
[http://switchboard.nrdc.org/blogs/lizbb/as\\_transcanada\\_pushes\\_out\\_a\\_fa.html](http://switchboard.nrdc.org/blogs/lizbb/as_transcanada_pushes_out_a_fa.html)  
asked to address

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- The connection to Bakken oil production

All best,

Liz and Susan

Liz Barratt-Brown

Senior Attorney

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**To:** Michael Goo/DC/USEPA/US@EPA; Alex Barron/DC/USEPA/US@EPA[]; lex Barron/DC/USEPA/US@EPA[]  
**Cc:** "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]  
**From:** "Barratt-Brown, Liz"  
**Sent:** Tue 2/22/2011 10:18:04 PM  
**Subject:** Controversy growing as State revises Keystone XL tar sands pipeline EIS  
[released a report](#)  
[submitted comments](#)  
[fireball](#)  
[http://switchboard.nrdc.org/blogs/sclefkowitz/it\\_is\\_time\\_for\\_the\\_us\\_to\\_regul.html](http://switchboard.nrdc.org/blogs/sclefkowitz/it_is_time_for_the_us_to_regul.html)  
[recent report](#)  
[http://switchboard.nrdc.org/blogs/lizbb/as\\_transcanada\\_pushes\\_out\\_a\\_fa.html](http://switchboard.nrdc.org/blogs/lizbb/as_transcanada_pushes_out_a_fa.html)  
[asked to address](#)

Dear Michael and Alex:

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- The impact on endangered species, migratory birds and wetland habitats
- The connection to Bakken oil production

We would like to organize a small meeting of key EPA staff on this issue to discuss how EPA plans to engage on the next stage of the EIS. Let us know what might work for you.

All best,

Liz and Susan

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**To:** Matt Bogoshian/DC/USEPA/US@EPA[]  
**From:** "Barratt-Brown, Liz"  
**Sent:** Tue 3/8/2011 10:49:56 PM  
**Subject:** Re: Recent tar sands documents and update

Thanks Matt! Hope to see you soon. I don't know that I can make it to the landowner meeting. I am the lucky one who will testify as a minority witness at Friday's hearing on Canadian oil and Keystone XL.

All best,

Liz

----- Original Message -----

From: Bogoshian.Matt@epamail.epa.gov [mailto:Bogoshian.Matt@epamail.epa.gov]  
Sent: Tuesday, March 08, 2011 01:37 PM  
To: Barratt-Brown, Liz  
Cc: Giles-AA.Cynthia@epamail.epa.gov <Giles-AA.Cynthia@epamail.epa.gov>; Casey-Lefkowitz, Susan  
Subject: Re: Recent tar sands documents and update

Thanks Liz, we appreciate the information.

Best regards,

Matt

Matt Bogoshian  
Deputy Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
202-564-2440

From: "Barratt-Brown, Liz" <lizbb@nrdc.org>  
To: Cynthia Giles-AA/DC/USEPA/US@EPA, Matt  
Bogoshian/DC/USEPA/US@EPA  
Cc: "Casey-Lefkowitz, Susan" <sclefkowitz@nrdc.org>  
Date: 03/08/2011 01:15 PM  
Subject: Recent tar sands documents and update

Dear Cynthia and Matt,

I am forwarding our most recent submissions to the State Department related to our NEPA concerns with the SEIS. Hope these are helpful!

I am also including a list we just compiled of all the letters and comments on the pipeline, which we hope will also be helpful and

reassuring that so many voices have weighed in with concerns similar to EPA's.

Despite the turmoil in the Middle East, which proponents have used to try to push this pipeline permit through, we believe State should look carefully at all the issues that have been raised regarding the EIS. Even if you believed that tar sands oil was beneficial to the U.S., that should not mean State should not look critically at the concerns that have been raised. I know that we are coming down to the wire on the decision and appreciate all that EPA is doing to help make sure that they agree to do a thorough SEIS.

Here is a blog I wrote about why Keystone XL will not fix our Middle Eastern oil concerns:

[http://switchboard.nrdc.org/blogs/lizbb/as\\_transcanada\\_pushes\\_out\\_a\\_fa.html](http://switchboard.nrdc.org/blogs/lizbb/as_transcanada_pushes_out_a_fa.html)

. And here is a link to a blog that my colleague Susan Casey-Lefkowitz wrote regarding the Secretary's comments on this issue last week – comments that I think support the arguments that EPA has made to look seriously at what we can do to reduce our demand as the best strategy against exposure to foreign oil volatility.

[http://switchboard.nrdc.org/blogs/sclefkowitz/senator\\_asks\\_leading\\_question.html](http://switchboard.nrdc.org/blogs/sclefkowitz/senator_asks_leading_question.html)

All best,

Liz

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646-247-6907 (cell)  
[Lizbb@nrdc.org](mailto:Lizbb@nrdc.org)  
<http://switchboard.nrdc.org/blogs/lizbb/>

From: Barratt-Brown, Liz  
Sent: Tuesday, March 08, 2011 1:02 PM  
To: 'jason.steinbaum@mail.house.gov'; 'CenterAM@state.gov'  
Cc: 'Ryan Salmon'; 'Danielle Droitsch'; Lena Moffitt; Mickey Leibner  
Subject: Letters, reports, and other tar sands and Keystone XL follow-up information

- List of letters raising concerns about Keystone XL: there are a lot of these, so I'm putting this list at the bottom of the email.
- NRDC, Pipeline Safety Trust, NWF and Sierra Club Report Tar Sands Pipelines Safety Risks:

<http://www.nrdc.org/energy/files/tarsandssafetyrisks.pdf>

- The Pembina Institute Briefing Note The uncertain prospect of oilsands exports to Asia from Canada's West Coast:

<http://pubs.pembina.org/reports/pipelinetonowhere-usbriefingnote.pdf>

- Lincoln Star Journal article "Some see Keystone XL as path to higher gas prices in Midwest":

[http://journalstar.com/news/state-and-regional/nebraska/article\\_7c6a08e6-0fbe-5ee4-89ef-a599b315a3f9.html](http://journalstar.com/news/state-and-regional/nebraska/article_7c6a08e6-0fbe-5ee4-89ef-a599b315a3f9.html)

- AP article "Keystone XL may mean higher Canadian crude prices":

<http://www.bloomberg.com/news/2011-01-25/keystone-xl-may-mean-higher-canadian-crude-prices.html>

- NWF Report Staying Hooked on a Dirty Fuel: Why Canadian Tar Sands Pipelines Are a Bad Bet for the United States:

[http://www.nwf.org/News-and-Magazines/Media-](http://www.nwf.org/News-and-Magazines/Media-Center/Reports/Archive/2010/~media/PDFs/Global%20Warming/Reports/NWF_TarSands_final.ashx)

[Center/Reports/Archive/2010/~media/PDFs/Global%20Warming/Reports/NWF\\_TarSands\\_final.ashx](http://www.nwf.org/News-and-Magazines/Media-Center/Reports/Archive/2010/~media/PDFs/Global%20Warming/Reports/NWF_TarSands_final.ashx)

- NWF Fact Sheet The 17% Contradiction: Tar Sands and U.S. Emissions Reductions:

[http://www.nwf.org/global-warming/policy-solutions/climate-and-energy/stop-dirty-](http://www.nwf.org/global-warming/policy-solutions/climate-and-energy/stop-dirty-fuels/~media/PDFs/Global%20Warming/Tar-Sands/Cancun%20Tar%20Sands%20Fact%20Sheet%20Final%2011-23-10.ashx)

[fuels/~media/PDFs/Global%20Warming/Tar-Sands/Cancun%20Tar%20Sands%20Fact%20Sheet%20Final%2011-23-10.ashx](http://www.nwf.org/global-warming/policy-solutions/climate-and-energy/stop-dirty-fuels/~media/PDFs/Global%20Warming/Tar-Sands/Cancun%20Tar%20Sands%20Fact%20Sheet%20Final%2011-23-10.ashx)

- NWF Fact Sheet TransCanada Exaggerating Jobs Claims for Keystone XL:

[http://www.nwf.org/global-warming/policy-solutions/climate-and-energy/stop-dirty-](http://www.nwf.org/global-warming/policy-solutions/climate-and-energy/stop-dirty-fuels/~media/PDFs/Global%20Warming/Tar-Sands/Keystone_XL_Jobs_11-09-10.ashx)

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- Sierra Club Report Toxic Tar Sands: Profiles From the Front Lines:

<http://www.sierraclub.org/dirtyfuels/tar-sands/faces/default.aspx>

- Climate Action Network Canada Report The Tar Sands' Long Shadow: Canada's Campaign to Kill Climate Policies Outside Our Borders:

<http://www.climateactionnetwork.ca/e/publications/can-tar-sands-long-shadow.pdf>

- Ceres Report Canada's Oil Sands: Shrinking Window of Opportunity: <http://www.ceres.org/Page.aspx?pid=1251>

Letters to State Department about Keystone XL

Letters to Clinton expressing concern about Keystone XL:

- June 2010 letter from 50 Members of Congress (attached)  
: This letter focuses on the members' concerns about having the EIS properly account for lifecycle GHG emissions, and on having a transparent process for the National Interest Determination.

- December 2010 letter from 34 Members of Congress (attached): Following up the July 2010 House letter, requesting that the State Department issue a Supplemental Environmental Impact Statement with a public comment period, as requested by EPA in their comments on the Keystone XL Draft EIS.

- July 2010 letter from Representative Henry Waxman (attached): In his letter to Secretary Clinton, Congressman Waxman says he is concerned that the Keystone XL pipeline would be a step in the wrong direction in efforts to move America to a clean

energy economy. This letter also focuses on the lack on lifecycle greenhouse gas emissions analysis in the EIS, and on the national interest determination process.

- October 2010 letter from 11 Senators:  
<http://dirtyoilsands.org/files/SenateKXLtrToSecClinton.pdf>. This letter asks the State Department to answer questions regarding lifecycle greenhouse gas emissions, the need for Keystone XL, transboundary impacts, transitioning to a clean energy future, emergency response, the Ogallala Aquifer, pipeline safety, refinery pollution, and the timeline and process moving forward with the NEPA process and National Interest Determination.
- Senator Nelson October 2010 letter (attached) and Secretary Clinton's response:  
<http://dirtyoilsands.org/files/ClintonResponseToNelson-20101209-smaller.pdf>  
 . Ben Nelson also communicated with the State Department previously about Keystone XL. This letter from Nelson expressed concerns about remarks that Clinton made in San Francisco that appeared to be pre-judging the pipeline, and asks that she clarify these remarks. He expresses concern that the State Department does a thorough study of the environmental impacts which the pipeline will have on Nebraska's Sandhills and the Ogallala Aquifer.
- October 2011 Senator Johanns letter:  
[http://dirtyoilsands.org/files/Johanns\\_KXLtr\\_10.21\\_.10\\_.pdf](http://dirtyoilsands.org/files/Johanns_KXLtr_10.21_.10_.pdf). This is the most recent letter from Senator Johanns. In it, he expresses concerns about Secretary Clinton's San Francisco remarks, and requests consideration of alternative routes for Keystone XL. Other letters he has sent to the State Department and other agencies can be found at:  
<http://johanns.senate.gov/public/?p=trans>. Senator Johanns was also on an interview with Nebraska Watchdog on March 7, 2011 saying that he believes construction of Keystone XL "will be delayed, it needs to be delayed." Video and article here:  
<http://nebraska.watchdog.org/12969/johanns-on-xl-pipeline-construction-needs-to-be-delayed/>  
 .
- January 2011 letter from 21 Nebraska State Senators asking Secretary Clinton to support the requests of Senators Nelson and Johanns related to Keystone XL: An article about the letter is here:  
[http://journalstar.com/news/state-and-regional/nebraska/article\\_1d4b0ffb-b8ac-5774-882b-60f52e611a3d.html](http://journalstar.com/news/state-and-regional/nebraska/article_1d4b0ffb-b8ac-5774-882b-60f52e611a3d.html)

Letters to Elizabeth Orlando, former Keystone XL Project Manager at Department of State, expressing concern about Keystone XL:

- July 2010 letter from Representative Henry Waxman (attached): The letter builds on Congressman Waxman's letter to Secretary Clinton, containing more details on GHG impacts from tar sands, and also posing important supply and demand questions.
- July 2010 letter from Representative Fortenberry



(attached): Says that he has heard from many of constituents about concerns about impacts to Ogallala Aquifer and the Sandhills, and wants comments from those who expressed concerns about the Ogallala and Sandhills to be taken into account since they are “unique resources that deserve a high level of protection.”

Letters to Robert Hormats, Harold Koh, Kerri-Ann Jones, Keith Benes, Daniel Clune, and Alexander Yuan expressing concern about Keystone XL – and explaining why State is legally required to issue a full Supplemental Environmental Impact Statement:

- December 2010 letter from NRDC and Sierra Club to Robert Hormats, Harold Koh and Kerri-Ann Jones detailing why a Supplemental EIS is legally required (attached): Susan Casey-Lefkowitz’s blog about this letter: [http://switchboard.nrdc.org/blogs/sclefkowitz/public\\_deserves\\_a\\_chance\\_to\\_re.html](http://switchboard.nrdc.org/blogs/sclefkowitz/public_deserves_a_chance_to_re.html). The letter explains that an SEIS is required because there have been substantial changes in the proposed action; because there is significant new information and circumstances including the Kalamazoo River spill having happened and new information about adverse impacts to the Endangered American Burying Beetle; and to address inadequacies of the DEIS in furtherance of the purpose of NEPA.
- January 2011 letter from Sierra Club, NRDC, Friends of the Earth, Western Organization of Resource Councils, Plains Justice and NWF (attached): Following up the December 2010 legal letter. This letter focuses on the Bakken Marketlink project, and explains that especially now that the Bakken Marketlink has been confirmed as being built as part of Keystone XL, and SEIS is required in order to consider the impacts of this project in a single EIS with Keystone XL as the two projects are connected actions.
- February 2011 letter from Sierra Club, NRDC, Friends of the Earth, Western Organization of Resource Councils, and NWF (attached): following up the two previous letters. This letter focuses on the Cushing Marketlink Project and the Bakken Marketlink Interconnection as significant changes to the project that require the issuance of a Supplemental EIS.

Agency comments on the Keystone XL Draft EIS- DOE and DOI address their comments to Elizabeth Orlando, while the EPA addresses their comments to Jose Fernandez, Assistant Secretary of Economic, Energy, and Business Affairs and Kerri-Ann Jones, Assistant Secretary of Oceans and International Environmental and Scientific Affairs. These comments all touch on numerous issues in and inadequacies of the DEIS; the EPA’s comments are especially notable in that they give the DEIS the lowest possible rating of “Category 3: Inadequate” and request a revised DEIS prior to the publication of a Final EIS:

- DOE’s comments on Keystone XL Draft EIS [http://nepa.energy.gov/documents/07-02-10\\_DOE\\_Comments\\_on\\_KeystoneXL\\_DEIS\\_%282%29.pdf](http://nepa.energy.gov/documents/07-02-10_DOE_Comments_on_KeystoneXL_DEIS_%282%29.pdf)

and Liz Barratt-Brown's blog about the comments:

[http://switchboard.nrdc.org/blogs/lizbb/us\\_department\\_of\\_energy\\_questi.html](http://switchboard.nrdc.org/blogs/lizbb/us_department_of_energy_questi.html)

- EPA's comments on Keystone XL Draft EIS

[http://yosemite.epa.gov/oeca/webeis.nsf/%28PDFView%29/20100126/\\$file/20100126.PDF?OpenElement](http://yosemite.epa.gov/oeca/webeis.nsf/%28PDFView%29/20100126/$file/20100126.PDF?OpenElement)

and Susan Casey-Lefkowitz's blog about the comments:

[http://switchboard.nrdc.org/blogs/sclefkowitz/lowest\\_rating\\_from\\_epa\\_for\\_tar.html](http://switchboard.nrdc.org/blogs/sclefkowitz/lowest_rating_from_epa_for_tar.html)

- DOI's comments on the Keystone XL Draft EIS

[http://www.doi.gov/oepec/DOI\\_Comments\\_DOS\\_DEIS\\_Keystone\\_Project.pdf](http://www.doi.gov/oepec/DOI_Comments_DOS_DEIS_Keystone_Project.pdf)

Letters to Secretary Clinton expressing interest in permitting the pipeline:

- November 2010 letter from Representative Fred Upton

supporting the pipeline:

<http://media.washingtonindependent.com/Upton-letter-to-clinton.pdf>

. This letter says that "shifting our imports from hostile regimes to a friendly one is a no-brainer" and focuses on energy security and job creation.

- December 2010 letter from 39 Republican Members of

Congress calling for expedited approval of the pipeline

(attached): It focuses on Keystone XL as a source of energy security and jobs, and says that Canadians are mindful of their own GHG emissions and that pipelines are safe and being regulated.

- March 2011 letter from the American GI Forum of Texas:

Letter focusing on energy security in relation to conflict in the Middle East, and Keystone XL being able to deliver "conflict-free" oil, and job creation. An article about the letter can be found here:

<http://news.morningstar.com/all/market-wire/11727908/american-gi-forum-of-texas-inc-hispanic-veterans-urge-clinton-us-state-department-to-grant-pipeline-permit-without-delay.aspx>

- March 2011 letter from 66 veterans: Letter focusing on job creation and "the need for a more domestic, secure supply of oil from a friendly and reliable trading partner such as Canada."

An article about the letter can be found here:

[http://www.tradingmarkets.com/news/stock-alert/trp\\_trp\\_media-advisory-transcanada-american-veterans-endorse-keystone-xl-pipeline-1534410.html](http://www.tradingmarkets.com/news/stock-alert/trp_trp_media-advisory-transcanada-american-veterans-endorse-keystone-xl-pipeline-1534410.html)

Liz Barratt-Brown

Senior Attorney

Natural Resources Defense Council

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202-289-2404

646-247-6907 (cell)

Lizbb@nrdc.org

<http://switchboard.nrdc.org/blogs/lizbb/>

(See attached file: Sierra Club - DOS follow-up letter 1-26-11.pdf)(See

attached file: Cushing Marketlink SEIS letter\_FINAL\_022411.pdf)

**To:** Cliff Rader/DC/USEPA/US@EPA[]  
**From:** "Swift, Anthony"  
**Sent:** Thur 3/31/2011 4:10:48 PM  
**Subject:** Diluted bitumen pipeline safety issues

Hi Cliff,

I just wanted to follow up with you again regarding the pipeline safety issues for Keystone XL and diluted bitumen pipelines in general. We tried to provide more of our technical analysis in the letter NRDC sent to PHMSA last week, but I wanted to discuss any outstanding issues or concerns.

Would it be possible to schedule a phone call or meeting sometime in the next few days to touch bases on this?

Best,

Anthony

Attorney, International Program\*

Natural Resources Defense Council

1200 New York Ave, N.W., Suite 400

Washington DC, 20005

Tel: : 1.202.513.6276, Cell: 1.215.478.4967

\* Not yet admitted to practice in Washington, DC

**To:** "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; N=Matt Bogoshian/OU=DC/O=USEPA/C=US@EPA[]  
**Cc:** "Swift, Anthony" [aswift@nrdc.org]; Barratt-Brown, Liz" [lizbb@nrdc.org]; N=Cliff Rader/OU=DC/O=USEPA/C=US@EPA[]  
**From:** CN=Susan Bromm/OU=DC/O=USEPA/C=US  
**Sent:** Fri 5/13/2011 4:55:31 PM  
**Subject:** Re: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

Susan,

We'd be happy to meet. We are in the midst of deliberations on our comment letter on the SEIS so we aren't in a position to say much but it would be good to hear your thoughts.

Susan

This message is being sent via Blackberry. Please excuse typos.

----- Original Message -----

From: "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]  
Sent: 05/11/2011 07:43 PM AST  
To: Matt Bogoshian  
Cc: "Swift, Anthony" <aswift@nrdc.org>; "Barratt-Brown, Liz" <lizbb@nrdc.org>; Susan Bromm; Cliff Rader  
Subject: RE: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

Hi Matt,

I was not aware of your move. Congratulations - we'll miss you on NEPA issues, but it is good to know you'll be there on the chemical safety.

Susan, it would be great to be able to talk to you about the supplemental draft EIS for Keystone XL.

Best,

Susan

Susan Casey-Lefkowitz  
Director International Program  
Natural Resources Defense Council  
1200 New York Ave, NW, Suite 400  
Washington, DC 20005  
tel: 202 289 2366  
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email: sclefkowitz@nrdc.org  
Blog: <http://switchboard.nrdc.org/blogs/sclefkowitz/>  
Dirty Fuels Blog: <http://switchboard.nrdc.org/cgi-bin/mt/mt-search.cgi?tag=dirtyfuels>

-----Original Message-----

From: Bogoshian.Matt@epamail.epa.gov [mailto:Bogoshian.Matt@epamail.epa.gov]  
 Sent: Wednesday, May 11, 2011 11:57 AM  
 To: Casey-Lefkowitz, Susan  
 Cc: Swift, Anthony; Barratt-Brown, Liz; Bromm.Susan@epamail.epa.gov; Rader.Cliff@epamail.epa.gov  
 Subject: Re: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

Thank you for the information Susan. I am passing this e-mail on to Susan Bromm who leads our NEPA work in the Office of Federal Activities within EPA's Office of Enforcement. She will make sure that this input is properly considered and continue to carry out our important EPA obligations in this case.

You may not have been aware, but I have been appointed to an exciting new role in EPA's Office of Chemical Safety and Pollution Prevention and will no longer be working on NEPA issues as I have been in the past. I will however keep a close eye on what happens on this important Keystone permit as it makes its way through the public process.

Regards,  
 Matt

Matt Bogoshian  
 Senior Policy Counsel  
 Office of Chemical Safety and Pollution Prevention  
 U.S. Environmental Protection Agency  
 1200 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20460  
 202-564-2902

From: "Casey-Lefkowitz, Susan" <sclefkowitz@nrdc.org>  
 To: Matt Bogoshian/DC/USEPA/US@EPA  
 Cc: "Barratt-Brown, Liz" <lizbb@nrdc.org>, "Swift, Anthony" <aswift@nrdc.org>  
 Date: 05/11/2011 10:05 AM  
 Subject: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

Dear Matt,

There have been a number of pipeline spills lately in the U.S. and in Canada that indicate the need for stronger pipeline safety measures. It is especially worrying when we see the most recent spill from TransCanada's new Keystone tar sands pipeline – the same company that is proposing the Keystone XL tar sands pipeline that would traverse the precious resources of the Nebraska Sand hills and the Ogallala Aquifer.

The supplemental draft environmental impact statement for the proposed pipeline does not adequately assess the safety impacts, as it also lacks adequate analysis on many other key issues of concern to EPA, including refinery pollution, environmental justice, alternate routes, wetlands and migratory birds. We need to put the permitting process for the Keystone XL tar sands pipeline on hold until we have a thorough safety assessment and thorough assessment of all the issues of concern to EPA, local residents and others.

Below is an NRDC blog on the most recent leak from the new Keystone I tar sands pipeline and links to our blogs on the supplemental draft EIS for the proposed Keystone XL tar sands pipeline.

Regards,

Susan

Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

To read more, see:

[http://switchboard.nrdc.org/blogs/aswift/yet\\_another\\_leak\\_on\\_a\\_new\\_pipe.html](http://switchboard.nrdc.org/blogs/aswift/yet_another_leak_on_a_new_pipe.html)

Over the last year we've had many recent indications of the risks of tar sands diluted bitumen pipelines – an 840,000 gallon spill in Michigan, a 250,000 gallon spill outside Chicago, a 1.3 million gallon spill in Alberta, as well as our recent report examining the safety of tar sands pipelines. On May 7, the Keystone tar sands pipeline provided yet another warning when it spilled approximately 21,000 gallons of crude in North Dakota. This is its eleventh and most significant spill.

Considering that Keystone has been in operation for less than a year and it was predicted to spill no more than once every seven years, this is yet another troubling indicator that U.S. safety regulations intended for pipelines moving conventional oil may not be sufficient for pipelines moving diluted bitumen. And the Keystone pipeline is not going to get any stronger or safer than it is now, as many of the risks associated with hot, high pressure diluted bitumen pipelines - including internal corrosion, abrasion and stress corrosion cracking – only weaken pipelines over time. One has to wonder whether the leaks in the new Keystone pipeline are our canary in the coal mine, portending worse things to come. We should not permit Keystone XL, another tar sands diluted bitumen pipeline which is currently routed through the Ogallala Aquifer, until we give our pipeline regulators a chance to catch up and develop the appropriate safety standards.

For blog on lack of pipeline safety analysis in the Keystone XL supplemental draft EIS:

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Susan Casey-Lefkowitz  
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**Cc:** "Swift, Anthony" [aswift@nrdc.org]; Barratt-Brown, Liz" [lizbb@nrdc.org]; liif Rader/DC/USEPA/US@EPA[]  
**From:** "Casey-Lefkowitz, Susan"  
**Sent:** Fri 5/13/2011 6:14:26 PM  
**Subject:** RE: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

It will be good to see you again!

Let us know when would work for you next week or the week after. Thursday morning would work well for us.

Best,

Susan

Susan Casey-Lefkowitz  
Director International Program  
Natural Resources Defense Council  
1200 New York Ave, NW, Suite 400  
Washington, DC 20005  
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-----Original Message-----

From: Bromm.Susan@epamail.epa.gov [mailto:Bromm.Susan@epamail.epa.gov]  
Sent: Friday, May 13, 2011 12:56 PM  
To: Casey-Lefkowitz, Susan; Bogoshian.Matt@epamail.epa.gov  
Cc: Swift, Anthony; Barratt-Brown, Liz; Rader.Cliff@epamail.epa.gov  
Subject: Re: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

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We'd be happy to meet. We are in the midst of deliberations on our comment letter on the SEIS so we aren't in a position to say much but it would be good to hear your thoughts.

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Sent: 05/11/2011 07:43 PM AST

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Cc: "Swift, Anthony" <aswift@nrdc.org>; "Barratt-Brown, Liz" <lizbb@nrdc.org>; Susan Bromm; Cliff Rader

Subject: RE: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

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Blog: <http://switchboard.nrdc.org/blogs/sclefkowitz/>

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From: Bogoshian.Matt@epamail.epa.gov [mailto:Bogoshian.Matt@epamail.epa.gov]

Sent: Wednesday, May 11, 2011 11:57 AM

To: Casey-Lefkowitz, Susan

Cc: Swift, Anthony; Barratt-Brown, Liz; Bromm.Susan@epamail.epa.gov; Rader.Cliff@epamail.epa.gov

Subject: Re: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

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202-564-2902

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Cc: "Barratt-Brown, Liz" <lizbb@nrdc.org>, "Swift, Anthony" <aswift@nrdc.org>  
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**To:** "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]  
**Cc:** "Swift, Anthony" [aswift@nrdc.org]; N=Cliff Rader/OU=DC/O=USEPA/C=US@EPA;"Barratt-Brown, Liz" [lizbb@nrdc.org]; Barratt-Brown, Liz" [lizbb@nrdc.org]; N=Matt Bogoshian/OU=DC/O=USEPA/C=US@EPA[]  
**From:** CN=Susan Bromm/OU=DC/O=USEPA/C=US  
**Sent:** Fri 5/13/2011 7:53:28 PM  
**Subject:** RE: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

Susan,

Our Thursday a.m.'s are booked solid with staff meetings. Is there another time slot that is likely to work for you?

From: "Casey-Lefkowitz, Susan" <sclefkowitz@nrdc.org>  
 To: Susan Bromm/DC/USEPA/US@EPA, Matt Bogoshian/DC/USEPA/US@EPA  
 Cc: "Swift, Anthony" <aswift@nrdc.org>, "Barratt-Brown, Liz" <lizbb@nrdc.org>, Cliff Rader/DC/USEPA/US@EPA  
 Date: 05/13/2011 02:15 PM  
 Subject: RE: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

It will be good to see you again!

Let us know when would work for you next week or the week after. Thursday morning would work well for us.

Best,

Susan

Susan Casey-Lefkowitz  
 Director International Program  
 Natural Resources Defense Council  
 1200 New York Ave, NW, Suite 400  
 Washington, DC 20005  
 tel: 202 289 2366  
 cell: 646 287 6225  
 email: sclefkowitz@nrdc.org  
 Blog: <http://switchboard.nrdc.org/blogs/sclefkowitz/>  
 Dirty Fuels Blog: <http://switchboard.nrdc.org/cgi-bin/mt/mt-search.cgi?tag=dirtyfuels>

-----Original Message-----

From: Bromm.Susan@epamail.epa.gov [mailto:Bromm.Susan@epamail.epa.gov]  
Sent: Friday, May 13, 2011 12:56 PM  
To: Casey-Lefkowitz, Susan; Bogoshian.Matt@epamail.epa.gov  
Cc: Swift, Anthony; Barratt-Brown, Liz; Rader.Cliff@epamail.epa.gov  
Subject: Re: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

Susan,  
We'd be happy to meet. We are in the midst of deliberations on our comment letter on the SEIS so we aren't in a position to say much but it would be good to hear your thoughts.  
Susan

This message is being sent via Blackberry. Please excuse typos.

----- Original Message -----

From: "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]  
Sent: 05/11/2011 07:43 PM AST  
To: Matt Bogoshian  
Cc: "Swift, Anthony" <aswift@nrdc.org>; "Barratt-Brown, Liz" <lizbb@nrdc.org>; Susan Bromm; Cliff Rader  
Subject: RE: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

Hi Matt,

I was not aware of your move. Congratulations - we'll miss you on NEPA issues, but it is good to know you'll be there on the chemical safety.

Susan, it would be great to be able to talk to you about the supplemental draft EIS for Keystone XL.

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-----Original Message-----

From: Bogoshian.Matt@epamail.epa.gov [mailto:Bogoshian.Matt@epamail.epa.gov]  
 Sent: Wednesday, May 11, 2011 11:57 AM  
 To: Casey-Lefkowitz, Susan  
 Cc: Swift, Anthony; Barratt-Brown, Liz; Bromm.Susan@epamail.epa.gov; Rader.Cliff@epamail.epa.gov  
 Subject: Re: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

Thank you for the information Susan. I am passing this e-mail on to Susan Bromm who leads our NEPA work in the Office of Federal Activities within EPA's Office of Enforcement. She will make sure that this input is properly considered and continue to carry out our important EPA obligations in this case.

You may not have been aware, but I have been appointed to an exciting new role in EPA's Office of Chemical Safety and Pollution Prevention and will no longer be working on NEPA issues as I have been in the past. I will however keep a close eye on what happens on this important Keystone permit as it makes its way through the public process.

Regards,  
 Matt

Matt Bogoshian  
 Senior Policy Counsel  
 Office of Chemical Safety and Pollution Prevention  
 U.S. Environmental Protection Agency  
 1200 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20460  
 202-564-2902

From: "Casey-Lefkowitz, Susan" <sclefkowitz@nrdc.org>  
 To: Matt Bogoshian/DC/USEPA/US@EPA  
 Cc: "Barratt-Brown, Liz" <lizbb@nrdc.org>, "Swift, Anthony" <aswift@nrdc.org>  
 Date: 05/11/2011 10:05 AM  
 Subject: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

Dear Matt,

There have been a number of pipeline spills lately in the U.S. and in Canada that indicate the need for stronger pipeline safety measures. It is especially worrying when we see the most recent spill from TransCanada's new Keystone tar sands pipeline – the same company that is proposing the Keystone XL tar sands pipeline that would traverse the precious resources of the Nebraska Sand hills and the Ogallala Aquifer.

The supplemental draft environmental impact statement for the proposed pipeline does not adequately assess the safety impacts, as it also lacks adequate analysis on many other key issues of concern to EPA, including refinery pollution, environmental justice, alternate routes, wetlands and migratory birds. We need to put the permitting process for the Keystone XL tar sands pipeline on hold until we have a thorough safety assessment and thorough assessment of all the issues of concern to EPA, local residents and others.

Below is an NRDC blog on the most recent leak from the new Keystone I tar sands pipeline and links to our blogs on the supplemental draft EIS for the proposed Keystone XL tar sands pipeline.

Regards,

Susan

Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

To read more, see:

[http://switchboard.nrdc.org/blogs/aswift/yet\\_another\\_leak\\_on\\_a\\_new\\_pipe.html](http://switchboard.nrdc.org/blogs/aswift/yet_another_leak_on_a_new_pipe.html)

Over the last year we've had many recent indications of the risks of tar sands diluted bitumen pipelines – an 840,000 gallon spill in Michigan, a 250,000 gallon spill outside Chicago, a 1.3 million gallon spill in Alberta, as well as our recent report examining the safety of tar sands pipelines. On May 7, the Keystone tar sands pipeline provided yet another warning when it spilled approximately 21,000 gallons of crude in North Dakota. This is its eleventh and most significant spill.

Considering that Keystone has been in operation for less than a year and it was predicted to spill no more than once every seven years, this is yet another troubling indicator that U.S. safety regulations intended for pipelines moving conventional oil may not be sufficient for pipelines moving diluted bitumen. And the Keystone pipeline is not going to get any stronger or safer than it is now, as many of the risks associated with hot, high pressure diluted bitumen pipelines - including internal corrosion, abrasion and stress corrosion cracking – only weaken pipelines over time. One has to wonder whether the leaks in the new Keystone pipeline are our canary in the coal mine, portending worse things to come. We should not permit Keystone XL, another tar sands diluted bitumen pipeline which is currently routed through the Ogallala Aquifer, until we give our pipeline regulators a chance to catch up and develop the appropriate safety standards.

For blog on lack of pipeline safety analysis in the Keystone XL supplemental draft EIS:

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**To:** Michael Goo/DC/USEPA/US@EPA; Alex Barron/DC/USEPA/US@EPA[]; lex Barron/DC/USEPA/US@EPA[]  
**Cc:** "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]  
**From:** "Barratt-Brown, Liz"  
**Sent:** Mon 5/16/2011 7:02:00 PM  
**Subject:** Keystone XL SDEIS deadline soon

Hi Michael and Alex,

Hope you are both doing well!

I wanted to let you know that the public comments (including EPA's) are due by June 6 on the Supplemental Draft Environmental Impact Statement. We'd asked for an extension for comment because it is a long and complex SDEIS and 45 days is speeding by. We had also asked for field hearings, which they had held on the original draft, but have not scheduled for this Supplemental, even though it is a year later and there are a lot more people concerned about the pipeline.

Substantively the SDEIS is as lacking as the DEIS, which is extremely discouraging.

Can we come in and talk with you about the agency response? We have a meeting with Susan Bromm, who is leading the career staff input on Thursday. And we have asked for a meeting with Bob Sussman, but have not heard back yet.

Thanks!

Liz

Liz Barratt-Brown

Senior Attorney

Natural Resources Defense Council

1200 New York Avenue, NW, Suite 400

Washington, D.C. 20005

202-289-2404

646-247-6907 (cell)

Lizbb@nrdc.org

<http://switchboard.nrdc.org/blogs/lizbb/>

**To:** "Barratt-Brown, Liz" [lizbb@nrdc.org]  
**Cc:** CN=Cliff Rader/OU=DC/O=USEPA/C=US@EPA;"Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]  
**From:** CN=Susan Bromm/OU=DC/O=USEPA/C=US  
**Sent:** Mon 5/16/2011 3:56:32 PM  
**Subject:** RE: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

Liz,

How would 3:30 on Thursday work for you?

From: "Barratt-Brown, Liz" <lizbb@nrdc.org>  
 To: Susan Bromm/DC/USEPA/US@EPA, "Casey-Lefkowitz, Susan" <sclefkowitz@nrdc.org>  
 Cc: Cliff Rader/DC/USEPA/US@EPA  
 Date: 05/13/2011 05:08 PM  
 Subject: RE: Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

Hi Susan,

Susan's schedule is really packed next week so I am going to suggest some times that work for me (then I will bring in a few others) -

- Tuesday afternoon before 4:30
- Wednesday morning before noon and afternoon between 3-4:30
- Thursday afternoon

Let us know what might work on your end. I've taken Matt and Anthony off this string.

Thanks!

Liz

Liz Barratt-Brown  
 Senior Attorney  
 Natural Resources Defense Council  
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 202-289-2404  
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 Sent: Friday, May 13, 2011 3:53 PM

To: Casey-Lefkowitz, Susan  
Cc: Swift, Anthony; Rader.Cliff@epamail.epa.gov; Barratt-Brown, Liz; Bogoshian.Matt@epamail.epa.gov  
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Sent: 05/11/2011 07:43 PM AST  
To: Matt Bogoshian  
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 Sent: Wednesday, May 11, 2011 11:57 AM  
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Regards,  
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Matt Bogoshian  
 Senior Policy Counsel  
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Blog: What the 21,000 gallon Keystone spill tells us about the safety of tar sands diluted bitumen pipelines

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For blog summarizing inadequacies of the Keystone XL supplemental draft

EIS:

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Susan Casey-Lefkowitz

Director International Program

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**To:** Susan Bromm/DC/USEPA/US@EPA[]  
**Cc:** Cliff Rader/DC/USEPA/US@EPA[]  
**From:** "Barratt-Brown, Liz"  
**Sent:** Wed 5/18/2011 8:47:55 PM  
**Subject:** Meeting tomorrow on KXL SDEIS  
[Keystone XL SEIS Backgrounder FINAL May 18 2011.pdf](#)

Hi Susan and Cliff,

We are looking forward to our meeting with you tomorrow at 3:30 pm. I wanted to let you know who will be attending and ask if there is a room number that effects which entrance we go to at Ariel Rios.

Two of our participants will be joining by phone. Their contact numbers are by their names. Here is the list:

Ann Alexander (NRDC – Chicago - 312-651-3905)

Liz Barratt-Brown (NRDC)

Danielle Droitsch (Pembina Institute)

Lena Moffitt (Sierra Club)

Alex Moore (Friends of the Earth)

Lon Payne (Consultant to NRDC - )

Ryan Salmon (NWF)

Anthony Swift (NRDC)

I am attaching a backgrounder we did when the SDEIS first came out. We are working on a more detailed document, which we will have ready to share shortly.

It would be helpful to know who will be attending from EPA.

Thanks and see you then!

Liz

Liz Barratt-Brown

Senior Attorney

Natural Resources Defense Council

1200 New York Avenue, NW, Suite 400

Washington, D.C. 20005

202-289-2404

646-247-6907 (cell)

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**Natural Resources Defense Council \* Sierra Club  
National Wildlife Federation \* Friends of the Earth  
May 2011**

**The Keystone XL Tar Sands Pipeline:  
Supplemental Draft Environmental Impact Statement Is Inadequate**

In mid-April 2011, the State Department released its supplemental draft environmental impact statement (SDEIS) for the proposed Keystone XL tar sands pipeline. The draft SEIS fails to adequately address issues that were ignored or inadequately analyzed in the first environmental review or draft environmental impact statement (DEIS) that was released in April 2010.<sup>1</sup> In addition, several new substantive issues were identified since the release of the first environmental review a year ago and the State Department has a legal obligation to conduct further environmental review and to present these issues for public review and comment.<sup>2</sup> However, in this SDEIS, the State Department only provided superficial additional analysis regarding key issues such as the need for the pipeline, alternate routes, pipeline safety, greenhouse gas emissions, and environmental justice impacts in refinery communities. Further, despite numerous requests, so far the State Department has not agreed to hold field hearings along the pipeline route – a critical venue for landowners, farmers, and local community members to raise their concerns – and is only allowing a 45 day comment period. The State Department's inadequate analysis and refusal to hold public hearings and provide enough time for meaningful public review undermines the environmental review process and violates the requirements of the National Environmental Policy Act (NEPA).

**The Keystone XL pipeline is not needed**

The SDEIS incorrectly assumes there is a need for a pipeline. However, there is more than enough existing pipeline capacity to meet our needs as we move to cleaner sources of energy. In fact, there is so much excess capacity that without the Keystone XL project, the current pipeline system would not be filled for at least ten years.<sup>3</sup> Only the oil companies truly need this pipeline, as it would allow them to bypass Midwestern refineries, spreading out their distribution and charging Americans more at the pump.<sup>4</sup> The SDEIS states that the purpose and need for the pipeline is to provide the infrastructure necessary to transport heavy crude oil from Canada to

<sup>1</sup> State Department, Keystone XL Supplemental Draft Environmental Impact Statement (State Department, Keystone XL SDEIS), published online April 15, 2011, <http://www.keystonepipeline-xl.state.gov>.

<sup>2</sup> 40 C.F.R. § 1502.9 (1978), NRDC and Sierra Club, Comments to the Department of State Regarding the Need for a Supplemental Environmental Impact Statement for the TransCanada Keystone XL Pipeline, Dec. 16, 2010, <http://pulsoverde.nrdc.org/FINAL%20NRDC%20-%20Sierra%20Club%20Keystone%20XL%20SEIS%20Comment%20Letter%20December%202010%20fin.pdf>.

<sup>3</sup> EnSys Energy, Keystone XL Assessment, Dec. 23, 2010 (Ensys Assessment), pp. 7, 93, <http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf/AssmtDrftAccpt.pdf?OpenFileResource>.

<sup>4</sup> In diminishing oil supply in the Midwest by rerouting tar sands to the Gulf Coast, this will cause the price of oil and likely of gas at the pump to rise in the Midwest. Philip Verleger, "If gas prices go up further, blame Canada," Op. Ed., *Star Tribune*, March 13, 2011, <http://www.startribune.com/opinion/otherviews/117832183.html>.

refineries in the Gulf. In its analysis, the State Department ignores the Department of Energy's finding that if the United States adopts more aggressive fuel economy standards and policies to address vehicle miles traveled, our Gulf refineries will not need an expansion of tar sands pipelines.<sup>5</sup> By setting a goal to reduce our oil imports by 2020, the Obama administration has directed our country toward a future that does not include the Keystone XL pipeline.<sup>6</sup> Energy security will be found in clean energy options, not on a continued reliance on oil.

### **The environmental review does not analyze reasonable alternate routes**

Nebraska Senators, legislators, farmers and citizens have urged the State Department to consider alternate routes that would avoid the Nebraska Sandhills and the Ogallala Aquifer – the source of freshwater for over 2 million Americans.<sup>7</sup> Yet, the SDEIS does not analyze reasonable alternate routes, as required by NEPA.<sup>8</sup> Instead, the SDEIS identifies several unreasonable routes and declines to fully review them.<sup>9</sup> This lack of analysis seems calculated to protect the interests of the pipeline company TransCanada at the cost of the main source of agricultural and drinking water in America's heartland.<sup>10</sup> Reasonable alternatives do exist and include routes that are shorter and would avoid the Nebraska Sandhills.<sup>11</sup>

### **The safety of this pipeline has yet to be analyzed**

The SDEIS did not adequately analyze pipeline safety issues of diluted bitumen (raw tar sands) pipelines. While the analysis acknowledges that the Keystone XL pipeline system could spill as much as 1.7 million gallons of diluted bitumen a day without triggering the real-time leak detection system,<sup>12</sup> it then glosses over other concerns raised in a recent pipeline safety report.<sup>13</sup> The analysis includes a number of technical red herrings and inaccuracies which show a lack of

<sup>5</sup> EnSys Assessment, pp. 88-89, 91.

<sup>6</sup> President Obama, Remarks by the President on America's Energy Security, March 30, 2011, <http://www.whitehouse.gov/the-press-office/2011/03/30/remarks-president-americas-energy-security>.

<sup>7</sup> E.g., <http://johanns.senate.gov/public/?p=trans> (from Senator Johanns); [http://docs.nrdc.org/land/files/lan\\_10102901a.pdf](http://docs.nrdc.org/land/files/lan_10102901a.pdf) (from 11 other Senators); <http://www.nebraskafarmersunion.org/PressReleases/3.28.11%20DirtyOilSands-%20NFU-Protect%20Clean%20Water%20and%20Landowners%20from%20Pipeline%20Threats.htm> (from the Nebraska Farmers Union); and <http://switchboard.nrdc.org/blogs/eshope/Letter%20to%20Clinton%20on%20SEIS%204%204%2011.pdf> (from 100 landowners along the pipeline route).

<sup>8</sup> 40 C.F.R. § 1502.14.

<sup>9</sup> State Department, Keystone XL SDEIS, Section 4.3.

<sup>10</sup> State Department, Keystone XL SDEIS, Section 4.3.

<sup>11</sup> NRDC and Sierra Club, "Comments to the Department of State regarding the need for additional alternative route analysis in the Keystone XL Pipeline Project Draft Supplemental Environmental Impact Statement," April 7, 2011. <http://switchboard.nrdc.org/blogs/lizbb/NRDC-SC%20alt%20%20route%20analysis%20SEIS%20letter%204-7-11%20FINAL.pdf>.

<sup>12</sup> State Department, Keystone XL DSEIS, 3-127. The SDEIS says that up to 5% of the pipeline's volume can leak undetected by the real-time leak detection system. 5% of 830,000 bpd (the maximum stated capacity of Keystone XL) is approximately 41,500 barrels or over 1.7 million gallons.

<sup>13</sup> Anthony Swift, Susan Casey-Lefkowitz and Elizabeth Shope, "Tar Sands Pipelines Safety Risks," NRDC, NWF, Pipeline Safety Trust, and Sierra Club, February 2011. <http://www.nrdc.org/energy/files/tarsandssafetyrisks.pdf>.

understanding of the environmental impact of diluted bitumen.<sup>14</sup> The SDEIS compares diluted bitumen to corrosive crudes brought to U.S. refiners by tanker rather than the conventional oil most often found in U.S. pipelines, glosses over high spill rates due to internal corrosion in Alberta where pipelines often carry diluted bitumen, doesn't analyze what it admits is a high concentration of abrasive sediments in tar sands, and ignores the explosive risk of volatile natural gas condensate in diluted bitumen.<sup>15</sup> The State Department should allow sufficient time for a thorough safety review done by technical experts – for example by the U.S. Department of Transportation Pipeline and Hazardous Material Safety Administration.

### **The environmental review should take higher greenhouse gas emissions and other tar sands extraction impacts into account**

The SDEIS makes a good start in acknowledging that tar sands oil has higher lifecycle greenhouse emissions than conventional oil due to energy intensive extraction and production methods.<sup>16</sup> But it then incorrectly finds that these additional emissions do not need to be considered.<sup>17</sup> The Keystone XL pipeline will not only cause additional upgrading and refining emissions in the United States, it will also cause expansion of tar sands extraction in Canada and all the additional impacts that go along with that expansion.<sup>18</sup> A green light for Keystone XL will send strong signals to investors that will trigger immediate expansion in tar sands production.<sup>19</sup> The Keystone XL pipeline is intended to last for at least fifty years. The State Department must analyze the impacts of the project over its entire lifetime, not simply its first twenty years as it did in the SDEIS.<sup>20</sup> The SDEIS does not analyze the greenhouse gas emissions associated with this expansion, nor does it look at the impacts of strip-mining and drilling Alberta's boreal forests for tar sands which include vast toxic waste dumps, destruction of migratory bird nesting habitat, water and air pollution, and potential health impacts on downstream communities.

### **Environmental justice concerns and air pollution from refineries need better analysis**

The State Department neglects adequate analysis of impacts to the drinking water of minority and low income populations by saying that the pipeline company TransCanada is willing to pay damages of up to \$350 million in the event of a spill and will provide alternative drinking sources in the event of contamination.<sup>21</sup> Providing compensation is important, but this does not take away the requirement for an environmental justice analysis of how to prevent the anticipated contamination in the first place.<sup>22</sup> The State Department also incorrectly equates tar sands emissions to those of crudes that are currently refined in the Gulf area and concludes that they do not need to look at environmental justice impacts of air emissions from refineries since they are

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<sup>14</sup> State Department, Keystone XL SDEIS, Section 3.13.

<sup>15</sup> State Department, Keystone XL SDEIS, 3.111; 3.100; 3-118; 3-133.

<sup>16</sup> State Department, Keystone XL SDEIS, 3-195, 3-198.

<sup>17</sup> State Department, Keystone XL SDEIS, 3-196.

<sup>18</sup> Danielle Droitsch, "The link between Keystone XL and Canadian oilsands production," The Pembina Institute, 2011. <http://www.pembina.org/pub/2194>.

<sup>19</sup> Id.

<sup>20</sup> State Department, Keystone XL SDEIS, 3-180.

<sup>21</sup> State Department, Keystone XL SDEIS, 3-154 – 3-155.

<sup>22</sup> 42 U.S.C. §4321 *et. seq.*, Executive Order 12898.

“not likely [to] change the overall load of toxic or noxious refinery emissions.”<sup>23</sup> The two-step process of upgrading and then refining tar sands in the Gulf Coast region will put a burden on communities already suffering unfairly from air and water pollution from industrial development. The document also asserts that “there is no indication” that the Keystone XL pipeline will trigger any refineries to expand or upgrade due to the new source of heavy crude delivered by the proposed project, but does not substantiate this information.<sup>24</sup> Refinery expansions often have dramatic, negative impacts on the communities surrounding them, and should be considered more thoroughly in this section.<sup>25</sup> The State Department has a duty to look out for the welfare of these communities and it is not meeting this duty in the environmental review.

### **The public deserves an opportunity for local hearings and sufficient time for meaningful review**

Despite the fact that this pipeline is not needed, the State Department is rushing the public review and comment period for the SDEIS. This haste displays an unwillingness to listen to the concerns of affected citizens and suggests that the State Department has made its decision before completing a full review under the NEPA. Without sufficient time for public review and comment and without field hearings to provide the many affected landowners a chance for direct input, the State Department is ignoring the purpose of our NEPA and its goal to get the best information possible out for public review and comment for projects such as this tar sands pipeline.<sup>26</sup> The State Department should provide at least 120 days for public review and hold field hearings in every state through which the pipeline would pass, to publicly present the information contained in the document.<sup>27</sup>

America does not need another tar sands pipeline or expansion of tar sands imports. We can do better with clean energy alternatives to meet our transportation needs. The haste with which the supplemental draft environmental impact statement was prepared (one month) and the haste with which the public is expected to review it (45 days) is incomprehensible given the substantive new information the State Department was legally required to assess and given that there is no need for this tar sands pipeline. The lack of in depth assessment shows that the State Department should have taken more time to prepare this SDEIS. And given the many issues of local concern, local communities and land owners along the proposed pipeline right of way deserve an opportunity for in state hearings to voice their concerns.

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<sup>23</sup> State Department, Keystone XL SDEIS, 3-172.

<sup>24</sup> State Department, Keystone XL SDEIS, 3-173.

<sup>25</sup> The Sierra Club, “Toxic Tar Sands: Profiles from the Front Lines,” 2010. <http://www.sierraclub.org/dirtyfuels/tar-sands/faces/>.

<sup>26</sup> 40 C.F.R. § 1502 *et. seq.*

<sup>27</sup> Letter from NRDC et al. to the Honorable Hillary Clinton, April 4, 2011, <http://switchboard.nrdc.org/blogs/eshope/Letter%20to%20Clinton%20on%20SEIS%204%204%2011.pdf>

**To:** Michael Goo/DC/USEPA/US@EPA; Alex Barron/DC/USEPA/US@EPA[]; lex Barron/DC/USEPA/US@EPA[]  
**Cc:** "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; amoore@foe.org>[]  
**From:** "Barratt-Brown, Liz"  
**Sent:** Tue 5/24/2011 6:32:39 PM  
**Subject:** Letter signed by 34 local and national groups asking for comment period extension  
[Letter to EPA on KXL SDEIS May 24 2011 FINAL.pdf](#)  
[http://docs.nrdc.org/energy/files/ene\\_11052402a.pdf](http://docs.nrdc.org/energy/files/ene_11052402a.pdf)

Hi Michael and Alex,

We sent the attached letter today from 34 local and national groups thanking Administrator Lisa Jackson for her work on the proposed Keystone XL tar sands pipeline and asking that EPA request that the comment period be extended and that there be public hearings held in all the affected states on the Supplemental Draft EIS (SDEIS). Our email to the Administrator is below.

We look forward to our meeting on this next week. The comment period closes June 6 so the timing is very tight.

All best,

Liz

From: Barratt-Brown, Liz  
Sent: Tuesday, May 24, 2011 12:27 PM  
To: jackson.lisa@epa.gov  
Cc: dickerson.aaron@epa.gov; thompson.diane@epa.gov  
Subject: Letter signed by 34 local and national groups asking for Keystone XL pipeline comment period extension

Dear Administrator Jackson,

I am attaching a letter from 34 local and national groups thanking you for your work on the proposed Keystone XL tar sands pipeline and asking that EPA request that the comment period be extended and that there be public hearings held in all the affected states on the Supplemental Draft EIS (SDEIS). As you likely know, the comment period is only 45 days and there are no public hearings planned during the official comment period, making it extremely difficult for both local and national groups to participate



effectively, alert their constituents, and compile comments. This is of special concern along the pipeline route and in the already struggling refinery communities in and around Port Arthur and Houston.

Comments and hearings are particularly important because the review fails to adequately answer the majority of the questions posed by the public and by EPA in its comment letter of last July. In addition, there are a number of critical issues – such as pipeline safety and spill response – that have arisen since then that merit a much more thorough analysis than has been conducted in the SDEIS.

The letter can also be found on our website at: [http://docs.nrdc.org/energy/files/ene\\_11052402a.pdf](http://docs.nrdc.org/energy/files/ene_11052402a.pdf).

Please let us know if you have any questions about our concerns.

Thanks again for your engagement on this critical issue!

Liz Barratt-Brown

Liz Barratt-Brown

Senior Attorney

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**Alliance for Climate Protection • Audubon Nebraska • Big Thicket Association  
 Bold Nebraska • Calumet Project • Center for Biological Diversity  
 Center for International Environmental Law • Chesapeake Climate Action Network  
 Clean Air & Water, Inc. • Corporate Ethics International • Dakota Resource Council  
 Dakota Rural Action • Earthjustice • Environment America  
 Environmental Defence Canada • Friends of the Earth • Global Community Monitor  
 Golden Triangle Group Sierra Club • Greenpeace USA • Honor the Earth  
 League of Conservation Voters • Lincoln 350.org • Natural Resources Defense Council  
 Nebraska Farmers Union • Nebraska Green Party • Nebraskans for Peace  
 Public Citizen Texas • Rainforest Action Network • Safe Climate Campaign • Sierra Club  
 Southern Alliance for Clean Energy • Stop Tarsands Oil Pipelines  
 US Climate Action Network • Western Organization of Resource Councils**

Tuesday, May 24, 2011

Dear Administrator Jackson,

Thank you for your personal engagement and the involvement of the Environmental Protection Agency in the environmental review of the Keystone XL tar sands pipeline. We are pleased that the State Department agreed to issue a Supplemental Draft Environmental Impact Statement (SDEIS), but we have significant concerns about the inadequacy of the analysis undertaken and conclusions drawn in this SDEIS. We ask for your continued support in holding the State Department to a thorough assessment of the environmental impacts of the proposed Keystone XL tar sands pipeline.

In the Agency's comment letter of July 16, 2010, the EPA asked that the State Department assess in greater detail the need for the pipeline and alternatives to deepening our dependence on tar sands oil, the impact of the pipeline on upstream production of greenhouse gases, pipeline safety and spill response, pipeline routing and impacts on groundwater, wetlands, and migratory birds, and impacts of the project on minority and low income communities. Because it gives superficial treatment to or dismisses the issues mentioned above, we believe that the EPA has little choice but to issue a Category 3 rating to this SDEIS and ask that a new SDEIS be generated.

In spite of the Ensys analysis, contracted by the Department of Energy and included in the SDEIS, which found there is sufficient pipeline capacity for years to come, the SDEIS still argues there is a need for the pipeline. Despite the ICF analysis, contracted by the State Department and included in the SDEIS, which finds that tar sands oil has higher lifecycle greenhouse gas emissions than other sources of oil, the SDEIS dismisses the integral link between the pipeline and the upstream production emissions and other environmental impacts. In spite of the many pipeline ruptures and spills in the last year, the SDEIS fails to look at pipeline safety issues related specifically to diluted bitumen pipelines. It dismisses alternative routes without looking at the shortest routes in the U.S. and it includes only minimal analysis of wetland and migratory bird impacts. Finally, it fails to consider environmental justice concerns based on the false premise the project will have no additional air quality or community impacts in the areas surrounding the refineries accepting the pipeline's oil.

We ask that the EPA request the State Department to hold field hearings in every state through which the pipeline would pass, in order to publicly present the information contained in the review and give the public a forum to voice their concern for this major project. The timeframe for public comments should be adjusted as necessary to allow these field hearings to take place with sufficient notice. Given the many issues of local concern, communities and land owners along the proposed pipeline right of way and in refinery communities deserve an opportunity to officially voice their concerns.

The U.S. does not need another tar sands pipeline or expanded tar sands imports. In fact, adding the new tar sands capacity of Keystone XL to the recently built Alberta Clipper and Keystone 1 tar sands pipelines could increase the carbon in our fuel supply by at least 2% which would effectively offset all the gains made by EPA's proposed truck rule by 2030. We can do better with clean energy and efficiency alternatives to meet our transportation needs. We appreciate your continued vigilance in protecting the American public and our environment from the significant risks posed by this massive dirty fuels pipeline proposal.

Sincerely,

Alliance for Climate Protection

Audubon Nebraska

Big Thicket Association

Bold Nebraska

Calumet Project

Center for Biological Diversity

Center for International Environmental Law

Chesapeake Climate Action Network

Clean Air & Water, Inc.

Corporate Ethics International

Dakota Resource Council

Dakota Rural Action

Earthjustice

Environment America

Environmental Defence Canada

Friends of the Earth

Global Community Monitor

Golden Triangle Group Sierra Club

Greenpeace USA

Honor the Earth

League of Conservation Voters

Lincoln 350.org

Natural Resources Defense Council

Nebraska Farmers Union

Nebraska Green Party

Nebraskans for Peace

Public Citizen Texas

Rainforest Action Network

Safe Climate Campaign

Sierra Club

Southern Alliance for Clean Energy

Stop Tarsands Oil Pipelines

US Climate Action Network

Western Organization of Resource Councils

**To:** Alex Barron/DC/USEPA/US@EPA;Michael Goo/DC/USEPA/US@EPA[]; ichael Goo/DC/USEPA/US@EPA[]  
**Cc:** "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; Moore, Alex" [AMoore@foe.org]  
**From:** "Barratt-Brown, Liz"  
**Sent:** Thur 5/26/2011 6:49:09 PM  
**Subject:** The meaning of EPA NEPA ratings and KXL  
EPA review program and ratings (abbreviated version).doc

Hi Alex and Michael,

Thanks again you two for taking the time to meet with us yesterday.

As you heard from us, we are hoping EPA will issue an EU-3 to the SDIES. This will keep the door open for a CEQ referral and for resolving the outstanding issues EPA ahs with the SDEIS.

I am attaching an abbreviated memo that a former staffer of the federal Activities office wrote for us. I have highlighted the language of greatest relevance to the KXL issues. As you know, EPA rated the DEIS a "3" ("inadequate information"). The fact that they did not assign an impacts rating likely has to do with the fact the DEIS was so insufficient that there was not enough information upon which to assign a rating. You can ask Federal Activities for the reason.

Hope this is helpful. I found this really useful in understanding why a EU-3 is so critical.

Alex is following up on other points raised in our meeting that require follow-up.

All best,

Liz

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## Memorandum

To: Keystone XL Pipeline team  
 From: Leonidas Payne  
 Re: EPA NEPA review program and ratings  
 Date: May 16, 2010

Authority for EPA's NEPA review program is derived from Section 309 of the Clean Air Act. This section directs the EPA Administrator to "review and comment in writing" on three types of activities: legislation proposed by Federal departments or agencies, construction projects and other major Federal actions, and proposed regulations. Performance of these duties has been delegated to the Office of Federal Activities at EPA Headquarters in DC, and environmental review offices in the ten EPA Regions—collectively these entities are referred to as EPA's "NEPA Review program" or the "309 program."

The vast majority of the work under EPA's 309 program involves the review of Environmental Impact Statements for Federal projects and plans. Although Section 309 specifically references "newly authorized Federal projects for construction," there is no special emphasis placed on construction projects versus other types of Federal actions such as land management plans or licensing actions. In practice, the major dividing line between reviewed and non-reviewed project is whether the Federal agency initiating the project has identified it as an "EIS level" project. EPA will occasionally suggest that an agency prepare an EIS for a project or plan which an agency intends to analyze through an Environmental Assessment, or exempt from analysis through a Categorical Exclusion, but EPA has no formal process to gather advance information about such projects, so it is a rare event, typically in response to media reports of a particularly controversial project with minimal documentation.

For the class of projects and plans considered to be "EIS level" projects, EPA reviewers will typically review every stage of the NEPA documentation, starting with the Notice of Intent (scoping), and continuing through the Draft and Final Environmental Impact Statement, including any Revised or Supplemental Documents. EPA does not always provide formal written comments at the scoping stage, but it will always provide written comments on Draft EIS documents since that is considered to be the core responsibility of the 309 program.

For certain projects, EPA may act as a cooperating agency—this typically happens when an EPA regulatory approval is involved, or upon special request from the lead agency. Depending on available staff time and the complexity of a particular project or plan, EPA review staff may also take part in collaborative planning efforts or stakeholder groups.

In addition to written comments, EPA assigns ratings to Draft Environmental Impact Statements (including any Revised or Supplemental Drafts). These ratings have two components—a rating tied to the environmental impacts associated with the project or plan, and a rating on document adequacy. The "impact" rating has four tiers—Lack of

Objections (LO), Environmental Concerns (EC), Environmental Objections (EO), and Environmentally Unsatisfactory (EU)—from least to highest impacts. The “document adequacy” rating has three tiers—Adequate (“1”), Insufficient Information (“2”), and Inadequate (“3”). The complete rating is the combination of these “impact” and “document adequacy” ratings.<sup>1</sup> For example, a rating of EO-2 encapsulates EPA’s view that it objects to the environmental impacts associated with the project or plan, and it believes the underlying EIS is insufficient and should be improved. In its comment letter, EPA will elaborate on its substantive or procedural objections, concerns, etc.

It should be noted that the impact component of EPA’s rating takes into account the preferred alternative identified by the lead agency in the Draft EIS. For example, if a Draft EIS analyzes six alternatives with impacts that fall along a scale from no development (or perhaps even active restoration) to a highly impactful development scenario, and it selects a minimal development scenario with multiple mitigation measures as its preferred alternative, EPA will “rate” this preferred alternative. This creates a powerful incentive for lead agencies to identify a preferred alternative at the Draft stage, since otherwise the rating will be assigned to the alternative with the highest level of impact. In cases where a lead agency identifies multiple preferred alternatives with differing levels of impact, EPA will assign its rating to the alternative with the higher (or highest) level of impact.

The EPA ratings have significance not only for the message which they send to the lead agency, but also in terms of the level of follow-up work required of the EPA staff reviewer assigned to the project. EO ratings are particularly important in this regard, since they generate an active duty by the assigned reviewer to work with the lead agency to resolve the objections, if possible. There is no such obligation for projects which receive an EC rating (or, regrettably, a “2” rating<sup>2</sup>). Not surprisingly, the vast majority of Draft EISs reviewed by EPA get an LO or EC rating.

<sup>1</sup> Note that in certain cases—owing to perceived conflicts in the underlying descriptive text associated with individual rating components—the overall rating has only one component. For example, an LO (Lack of Objections) rating typically stands on its own, since it implies an adequate document (a “1” rating) upon which this impact conclusion can be based. Similarly, EPA may assign a “3” rating (Unsatisfactory) to a document, but refrain from assigning a specific impact rating. This rating is used in situations where EPA believes that the procedural deficiencies of the EIS document and underlying analysis are so severe that it prevents the reviewer from fully assessing the environmental impacts of the project or plan. For this reason, the “combined” ratings LO-3, EC-3, or EO-3, are never used, although EPA has assigned EU-3 ratings to a Draft EIS to particularly impactful projects with especially poor documentation—this is the “worst” rating which EPA can assign under its rating system.

<sup>2</sup> EPA reviewers have no real option to “object” to the adequacy of a Draft EIS under the rating system. There is generally considered to be a rather large gap between a “2” and a “3” rating. “2” ratings have little teeth, while “3” ratings are very difficult to push through the system, since they carry a potential CEQ referral threat.

There are four ratings (EU-1, EU-2, EU-3, or 3) which have special significance because they signal EPA's intention to initiate a referral of the project to CEQ unless the basis for the rating is addressed to EPA's satisfaction. In EPA parlance—these ratings are referred to as “adverse” ratings. In terms of the impact ratings, it is worth noting that EPA will generally avoid assigning an adverse impact rating unless the issue driving the rating is considered to fall under one of EPA's core regulatory authorities. EPA management will be more inclined to approve an adverse rating for extensive water or air quality impacts, as opposed to a threatened or endangered species issue.<sup>3</sup>

A comment letter which assigns an EU or 3 rating will generally request that a revised draft be prepared to address the deficiencies noted in EPA's comments. It is entirely up to the lead agency whether to issue a Revised Draft or proceed to a Final EIS. Issuance of a Revised Draft EIS by the lead agency typically—but not always—signals acknowledgement of major deficiencies in the project or documentation. In most cases the agency will make changes to the project, select a new preferred alternative, or make efforts to improve the analysis and/or documentation. The issuance of a Revised Draft with minimal changes will typically get a harsh reception from EPA, since EPA does not enjoy having to repeat itself. If a lead agency proceeds directly to a Final EIS after receiving an adverse rating on a Draft, the perception at EPA is that the lead agency has “called its bluff” on a potential referral and the matter is almost certainly headed to CEQ for an informal or formal resolution of the inter-agency conflict.

For obvious reasons, if an external party wishes to stop a project in its tracks, the best possible scenario would be if EPA assigns an EU rating (could be either EU-1, EU-2, or EU-3) to the project. A “3” rating can be nearly as powerful, in that it carries with it a request to prepare a revised environmental analysis document, which subsequently may be given an EU or 3 rating. Often the delay alone can help an outside organization achieve its objectives. An EO rating can be powerful as well. Despite the fact that EPA has unilaterally relinquished its option to refer the matter to CEQ down the road, EO letters may still contain comment language which can be used to establish “arbitrary and capricious” conduct by the lead agency as part of a third party appeal or litigation to stop a bad project. This may also be true, although to a lesser extent, in EPA comment letters where an EC rating has been assigned.<sup>4</sup> Outside organizations have also had some

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<sup>3</sup> Potential impacts to EJ or Tribal communities can play an interesting role in the assigning of ratings as well. Internal lobbying from EPA EJ or Tribal program staff, as well as a high degree of personal interest in these issues which is prevalent among EPA managers, can at times lead to ratings that are more adverse than they would be otherwise. In my experience EJ or Tribal issues have much more sway in driving ratings than other EPA programs which exist but are nevertheless outside the “core” of EPA's water, air, and waste responsibilities—for example “pollution prevention” or “smart growth” initiatives.

<sup>4</sup> One must remember that the bureaucratic challenges (in terms of mandatory briefings, sign-offs, etc.) associated with pushing an EC, EO, or EU/3 letter through the system can be vastly different. EPA review staff (and first-line supervisors) often compensate for



success playing up an EC rating in the media—the broader public can be sympathetic when it hears that “EPA is concerned about a project” since it generally does not understand that an Environmental Concerns rating—in terms of the message EPA is trying to impart to the lead agency—boils down to “we’re slightly concerned, but go ahead.”

Perhaps the more critical dividing line is the line between EO and EC ratings. If EPA review staff is on the fence about an EO or EC, one must do all one can to guide the reviewer towards an EO, since the EC rating is such a throw-away. An EC rating signals that EPA intends to disengage on the project aside from some limited due diligence to ensure the comment letter was read. Worse yet, if an EC rating goes out on a project or plan which is one of a series...it tends to establish a precedent among reviewers that all future project or plans of the same general type should get the same rating.

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these bureaucratic challenges by sending out what some call “hard EC” or “hard EO” letters—letters whose comment language expresses a greater level of discomfort than the rating would imply. DC review staff have less need to rely on such tactics compared to their Regional counterparts, since they are a bureaucratic level closer to and have greater access to the people who need to sign off on more adverse ratings.

**To:** Alex Barron/DC/USEPA/US@EPA;Michael Goo/DC/USEPA/US@EPA[]; ichael Goo/DC/USEPA/US@EPA[]  
**Cc:** "Barratt-Brown, Liz" [lizbb@nrdc.org]  
**From:** "Moore, Alex"  
**Sent:** Tue 5/31/2011 3:21:10 PM  
**Subject:** Keystone XL pipeline  
[P1.jpg](#)  
[P2.jpg](#)  
[P3.jpg](#)  
[P4.jpg](#)  
[P5.jpg](#)  
[P6.jpg](#)  
<http://www.reuters.com/article/2011/03/10/valero-refining-future-idUSWEN935620110310>  
[http://switchboard.nrdc.org/blogs/aswift/yet\\_another\\_leak\\_on\\_a\\_new\\_pipe.html](http://switchboard.nrdc.org/blogs/aswift/yet_another_leak_on_a_new_pipe.html)  
<http://www.omaha.com/article/20110512/NEWS01/705129844>

Hi Michael and Alex,

Great meeting with you last week. I wanted to send along follow up regarding some of your questions.

- Valero's CEO said "We do believe the future of refining in the U.S. is in exports ... There's been a real opportunity here." <http://www.reuters.com/article/2011/03/10/valero-refining-future-idUSWEN935620110310>. Valero is expanding a Texas refinery for Keystone XL.

- Here is NRDC's blog about the Keystone 1 Pipeline spills:  
[http://switchboard.nrdc.org/blogs/aswift/yet\\_another\\_leak\\_on\\_a\\_new\\_pipe.html](http://switchboard.nrdc.org/blogs/aswift/yet_another_leak_on_a_new_pipe.html)

- o There was a 12th spill over the weekend from Keystone 1, this time in Kansas and its being estimated to be a leak of 2,100 gallons of tar sands oil.

- News article about Senator Johanns (R-NE) letter from this month, criticizing the State Department for routing the pipeline through the Nebraska Sandhills and calling for comment period hearings:  
<http://www.omaha.com/article/20110512/NEWS01/705129844>. I can get you a copy of the letter too if that would be helpful.

- There is also a letter circulating in the House with about 35 current cosigners. I'll send it to you when it is finalized.

- You asked about more conservative agricultural groups. The Nebraska Cattlemen, who I'm told are reliably Republican, are supporting legislation that would regulate Keystone XL in Nebraska (and TransCanada says would kill the pipeline).

Here is a comment they gave at a hearing recently:

- o Jay Wolf, a rancher from Albion who also spoke on behalf of the Nebraska Cattlemen, told the committee that his questions to various federal agencies about who would be responsible for the costs of cleanup and restoration if the pipe were abandoned have gone unanswered.

"So it looks to me like I get to inherit the mess. I don't think that's fair," Wolf said.

<http://www.businessweek.com/ap/financialnews/D9L9UO9G1.htm>

- Our memo comparing EPA's comments to the SDEIS is close to being finalized. I'll send it to you when it is.
- I've also attached a few examples of the petitions circulating in the environmental justice communities around Houston. We've been told that Administrator Jackson is not "hearing from EJ communities." Here are a few examples, which we are continuing to collect and will send more your way.

Thanks,

Alex

Alex Moore

Dirty Fuels Campaigner

Friends of the Earth

1100 15th Street, NW

11th Floor

Washington, DC 20005

202-222-0733

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Ex. 5 - Personal Privacy

Ex. 6 - Personal Privacy

Zurbrugg Jr.

Patricia Smith

Nancy Mason

PROF ROONEY THOMAS FIDELTY BART

CHURCH

Joe THIBODEAU

Daria Jersky

Laurie Burtie

Andy Oppen

PETITION

I support the SIERRA CLUB in ENSURING  
 THE U.S. DEPARTMENT OF STATE PROVIDES A  
 SCIENTIFIC STUDY OF HOW KEYSTONE XL'S  
 TAR SANDS IMPACTS WILL IMPACT THE HOUSTON  
 REGION AND REQUEST LOCAL HEARINGS DURING  
 THE SDEI'S OFFICIAL COMMENT PERIOD.

Dr. Andrew M. Kordy  
 Finnessa White  
 Brenda Burt  
 Elvie Brunsford

Joyce Jark  
~~Michael Ceface~~  
 Clarence McIndel  
 Donnie McIndel

Ronald Wayne McIndel  
 Thelma Brown

William H. Brown

Yvonne Loyd

Kes  
 Loutha Greene

**Ex. 6 - Personal Privacy**

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### PETITION

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 TAR SANDS IMPORTS WILL IMPACT THE HOUSTON  
 REGION AND REQUEST LOCAL HEARINGS DURING  
 THE SDEIS'S OFFICIAL COMMENT PERIOD.

Keisha Wilson

**Ex. 6 - Personal Privacy**

Jamie Lee

Bill Lee

Garth Lee

Mary Steed

**Ex. 6 - Personal Privacy**

Tommy Steed

David Clay

**Ex. 6 - Personal Privacy**

Gloria Clay

Rosalie Maddox

**Ex. 6 - Personal Privacy**

Mae H West

### PETITION

I support the Sierra Club in ensuring  
the U.S. Department of State provides a  
scientific study of how Keystone XL's  
tar sands imports will impact the  
Houston region and request local hearings  
during the DOE's official comment period.



(1) Elisiah Soreathers Jr

## Ex. 6 - Personal Privacy

(2) Annie Grigsby

Ex. 6 - Personal Privacy

(3) Carl Reed

Ex. 6 - Personal Privacy

(4) Tommy Wright

Ex. 6 - Personal Privacy

### PETITION

I support the SIERRA CLUB in ENSURING the U.S. Department of State provides a SCIENTIFIC STUDY OF HOW KEYSSTONE XL'S TAR SANDS IMPORTS WILL IMPACT THE HOUSTON REGION AND REQUEST LOCAL HEARINGS DURING THE SDEIS'S OFFICIAL COMMENT PERIOD.

1. REGINALD FITZGERALD
2. Effie Lee Doty
3. Mageline Andres
4. Jenell White
5. Jamirick Manning
6. JAMES O. JONES
7. Janice Lee
8. Billy Lee
9. Cecil Simon

Ex. 6 - Personal Privacy

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AND REQUEST LOCAL HEARINGS DURING THE SDEIS'S  
OFFICIAL COMMENT PERIODS.



**To:** "Barron, Alex" [Alex.Barron@mail.house.gov]; ichael Goo/DC/USEPA/US@EPA[]  
**Cc:** "Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]  
**From:** "Barratt-Brown, Liz"  
**Sent:** Wed 6/1/2011 7:09:37 PM  
**Subject:** 34 Members of Congress ask the Administrator for more time for public review of Keystone XL tar sands pipeline  
 wrote to Secretary of State Hillary Clinton and EPA Administrator Lisa Jackson  
[http://switchboard.nrdc.org/blogs/eshope/34\\_members\\_of\\_congress\\_ask\\_for.html](http://switchboard.nrdc.org/blogs/eshope/34_members_of_congress_ask_for.html)  
[http://switchboard.nrdc.org/blogs/aswift/the\\_first\\_keystone\\_tar\\_sands\\_p.html](http://switchboard.nrdc.org/blogs/aswift/the_first_keystone_tar_sands_p.html)

This was sent to Bob a few minutes ago. What can you tell us is happening on this? Our ED Peter Lehner is talking with Cynthia tomorrow.

Thanks!

Liz

From: Barratt-Brown, Liz  
 Sent: Wednesday, June 01, 2011 3:02 PM  
 To: 'Sussman.Bob@epamail.epa.gov'; Giles-AA.Cynthia@epamail.epa.gov; McCarthy.gina@epa.gov  
 Cc: Rader.Cliff@epamail.epa.gov; Casey-Lefkowitz, Susan; bednar.Georgia@epamail.epa.gov  
 Subject: 34 Members of Congress ask the Administrator for more time for public review of Keystone XL tar sands pipeline

Dear Bob,

Thanks again for taking the time to meet with us last week. We really appreciate your taking the time and digging into this issue!

As you know, we hope that EPA will ask for an extension of the public comment period and for field hearings, especially in EPA's Environmental Justice Showcase Community of Port Arthur where no field hearings or outreach has been done on the impacts of this pipeline.

I wanted to let you know that 34 Members of Congress, led by Representatives Cohen, Inslee, Welch and Blumenauer, wrote to Secretary of State Hillary Clinton and EPA Administrator Lisa Jackson expressing concern about TransCanada's Keystone XL tar sands pipeline and requesting a 120 day public comment period and field hearings. The signers included Representative Rosa DeLauro; environmental justice

champion Representative John Lewis; and long-time environmental leader Representative George Miller. This letter also expresses concern about the lack of adequate analysis of greenhouse gas emissions, the need for the pipeline and its impact on the President's goal to reduce our oil imports, alternative routes avoiding Sandhills and Ogallala Aquifer, pipeline safety, and impacts to minority and low income communities. Read more at: [http://switchboard.nrdc.org/blogs/eshope/34\\_members\\_of\\_congress\\_ask\\_for.html](http://switchboard.nrdc.org/blogs/eshope/34_members_of_congress_ask_for.html)

This comes just on the heels of the current Keystone tar sands pipeline's twelfth spill on May 29th when a pipeline fitting around a pressure transmitter failed. And this is just three weeks after a broken pipe fitting on Keystone resulted in a 60' geyser of tar sands crude, spewing 21,000 gallons in North Dakota. Surely these spills should send a message to the State Department that building another tar sands pipeline through sensitive U.S. lands and waters makes no sense. Read more at: [http://switchboard.nrdc.org/blogs/aswift/the\\_first\\_keystone\\_tar\\_sands\\_p.html](http://switchboard.nrdc.org/blogs/aswift/the_first_keystone_tar_sands_p.html).

We want to thank the agency again for its leadership on this issue.

We look forward to hearing from you shortly.

All best,

Liz

Liz Barratt-Brown

Senior Attorney

Natural Resources Defense Council

1200 New York Avenue, NW, Suite 400

Washington, D.C. 20005

202-289-2404

646-247-6907 (cell)

Lizbb@nrdc.org

<http://switchboard.nrdc.org/blogs/lizbb/>

**To:** Alex Barron/DC/USEPA/US@EPA[]  
**From:** "Barratt-Brown, Liz"  
**Sent:** Wed 6/1/2011 7:12:12 PM  
**Subject:** 34 Members of Congress ask the Administrator for more time for public review of Keystone XL tar sands pipeline  
[wrote to Secretary of State Hillary Clinton and EPA Administrator Lisa Jackson](http://switchboard.nrdc.org/blogs/eshope/34_members_of_congress_ask_for.html)  
[http://switchboard.nrdc.org/blogs/eshope/34\\_members\\_of\\_congress\\_ask\\_for.html](http://switchboard.nrdc.org/blogs/eshope/34_members_of_congress_ask_for.html)  
[http://switchboard.nrdc.org/blogs/aswift/the\\_first\\_keystone\\_tar\\_sands\\_p.html](http://switchboard.nrdc.org/blogs/aswift/the_first_keystone_tar_sands_p.html)

Hi Alex,

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To: 'Sussman.Bob@epamail.epa.gov'; Giles-AA.Cynthia@epamail.epa.gov; McCarthy.gina@epa.gov  
Cc: Rader.Cliff@epamail.epa.gov; Casey-Lefkowitz, Susan; bednar.Georgia@epamail.epa.gov  
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**To:** Michael Goo/DC/USEPA/US@EPA; Alex Barron/DC/USEPA/US@EPA[]; lex Barron/DC/USEPA/US@EPA[]  
**Cc:** "Droitsch, Danielle(Consultant)" [ddroitsch@nrdc.org]; Swift, Anthony" [aswift@nrdc.org]; Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]  
**From:** "Barratt-Brown, Liz"  
**Sent:** Tue 9/27/2011 9:55:09 PM  
**Subject:** Tomorrow's meeting on Keystone XL  
[lizbb@nrdc.org](mailto:lizbb@nrdc.org)  
[www.nrdc.org](http://www.nrdc.org)  
<http://switchboard.nrdc.org/blogs/lizbb/>

Hi Michael and Alex,

It is great that you are able to join Arvin and reps from the enviro community tomorrow to talk about Keystone XL. Danielle Droitsch and Anthony Swift will be there for NRDC – I wanted to introduce them to you before the meeting. Danielle has joined NRDC after a long and fruitful relationship with us on this issue as Pembina Institute's Washington Rep. And Anthony is our crack pipeline safety and spill response expert.

The issue has really changed since we last met with you. I think you'll be heartened by broadening of support for EPA's position on the issue – e.g. to take the time needed to answer questions about the impact of the pipeline on clean energy, agricultural and drinking water safety, air quality in beleaguered refinery communities, and upstream impacts in Canada. There is also much stronger bi-partisan support for slowing things down to look at the impact on Nebraska's Ogallala aquifer.

Hope you are doing well and will be engaged on this issue in this critical last phase. We're counting on you!

Liz J

Liz Barratt Brown

Senior Attorney, International Program

Natural Resources Defense Council

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[www.nrdc.org](http://www.nrdc.org)

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We've moved as of July 5, 2011. Please note new address.



**To:** "Barratt-Brown, Liz" [lizbb@nrdc.org]; ob Sussman/DC/USEPA/US@EPA;Gina McCarthy/DC/USEPA/US@EPA;Cynthia Giles-AA/DC/USEPA/US@EPA;Georgia Bednar/DC/USEPA/US@EPA[]; ina McCarthy/DC/USEPA/US@EPA;Cynthia Giles-AA/DC/USEPA/US@EPA;Georgia Bednar/DC/USEPA/US@EPA[]; ynthia Giles-AA/DC/USEPA/US@EPA;Georgia Bednar/DC/USEPA/US@EPA[]; eorgia Bednar/DC/USEPA/US@EPA[]

**Cc:** Michael Goo/DC/USEPA/US@EPA;Alex Barron/DC/USEPA/US@EPA;[ganeson.arvin@epa.gov]; lex Barron/DC/USEPA/US@EPA;[ganeson.arvin@epa.gov]; ganeson.arvin@epa.gov>;Cliff Rader/DC/USEPA/US@EPA;"Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; liff Rader/DC/USEPA/US@EPA;"Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; Casey-Lefkowitz, Susan" [sclefkowitz@nrdc.org]; Droitsch, Danielle(Consultant)" [ddroitsch@nrdc.org]; Swift, Anthony" [aswift@nrdc.org]

**From:** "Barratt-Brown, Liz"

**Sent:** Tue 10/11/2011 10:02:14 PM

**Subject:** RE: Critical time for EPA to comment on FEIS/national interest for Keystone XL  
[http://www.nytimes.com/2011/10/08/science/earth/08pipeline.html?\\_r=1](http://www.nytimes.com/2011/10/08/science/earth/08pipeline.html?_r=1)  
[http://www.washingtonpost.com/national/health-science/keystone-pipeline-issue-becomes-a-headache-for-the-white-house/2011/10/07/gIQAJJZ8TL\\_story.html](http://www.washingtonpost.com/national/health-science/keystone-pipeline-issue-becomes-a-headache-for-the-white-house/2011/10/07/gIQAJJZ8TL_story.html)  
[lizbb@nrdc.org](mailto:lizbb@nrdc.org)  
[www.nrdc.org](http://www.nrdc.org)  
<http://switchboard.nrdc.org/blogs/lizbb/>  
[http://switchboard.nrdc.org/blogs/sclefkowitz/keystone\\_xl\\_tar\\_sands\\_pipeline\\_1.html](http://switchboard.nrdc.org/blogs/sclefkowitz/keystone_xl_tar_sands_pipeline_1.html)  
<http://switchboard.nrdc.org/blogs/sclefkowitz/Updated%20NID%20advocacy%20document%20September%208%2C%202011.pdf>  
[http://www.washingtonpost.com/business/economy/keystone-pipeline-e-mails-show-friendly-exchanges/2011/10/02/gIQAXzRdHL\\_story.html](http://www.washingtonpost.com/business/economy/keystone-pipeline-e-mails-show-friendly-exchanges/2011/10/02/gIQAXzRdHL_story.html)  
<http://www.nytimes.com/2011/10/03/opinion/say-no-to-the-keystone-xl.html?ref=opinion>  
[lizbb@nrdc.org](mailto:lizbb@nrdc.org)  
[www.nrdc.org](http://www.nrdc.org)  
<http://switchboard.nrdc.org/blogs/lizbb/>

Hi Bob,

I sent the email below a week ago and have not yet heard a response.

We would very much like to have the opportunity to meet with you to discuss the National Interest Determination process and the timing on the State Department decision, which we believe has been significantly compromised by its relationships with the contractor, Entrixx, and TransCanada's lobbyist Paul Elliott. The New York Times wrote an in-depth article about these concerns in last Saturday's paper.

[http://www.nytimes.com/2011/10/08/science/earth/08pipeline.html?\\_r=1](http://www.nytimes.com/2011/10/08/science/earth/08pipeline.html?_r=1)

The hearing on Friday was quite a powerful event, with ranchers from Nebraska, Native Americans from

the U.S. and Canada, clean energy advocates, business leaders, a Brigadier General, religious leaders, a whistleblower pipeline inspector, a representative from the transit unions, and many young people voicing their opposition to the pipeline. Juliet Eilperin's story in the Washington Post – also on Saturday – covers both their stories and the growing discontent among the President's supporters over the pipeline.

[http://www.washingtonpost.com/national/health-science/keystone-pipeline-issue-becomes-a-headache-for-the-white-house/2011/10/07/gIQAJJZ8TL\\_story.html](http://www.washingtonpost.com/national/health-science/keystone-pipeline-issue-becomes-a-headache-for-the-white-house/2011/10/07/gIQAJJZ8TL_story.html)

This is clearly seen as a critical upcoming decision by the Administration and as such should have the active involvement of all the cooperating agencies to ensure that the decision making process is both an informed and fair one. At this point, we do not believe that it is either. This is a view held by a broadening community of interests.

As you know, we greatly appreciate EPA's involvement to date and we hope to hear from you soon.

Thanks Bob!

Liz

Liz Barratt Brown

Senior Attorney, International Program

Natural Resources Defense Council

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Washington, DC 20005

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[www.nrdc.org](http://www.nrdc.org)

<http://switchboard.nrdc.org/blogs/lizbb/>

We've moved as of July 5, 2011. Please note new address.

From: Barratt-Brown, Liz  
 Sent: Monday, October 03, 2011 12:54 PM  
 To: 'Sussman.Bob@epamail.epa.gov'; McCarthy.gina@epa.gov; Giles-AA.Cynthia@epamail.epa.gov; bednar.Georgia@epamail.epa.gov  
 Cc: goo.michael@epa.gov; barron.alex@epa.gov; ganeson.arvin@epa.gov; Rader.Cliff@epamail.epa.gov; Casey-Lefkowitz, Susan; Droitsch, Danielle(Consultant); Swift, Anthony  
 Subject: Critical time for EPA to comment on FEIS/national interest for Keystone XL  
 Importance: High

Hi Bob,

As you likely know, the public comment deadline for the Keystone XL National Interest Determination is coming up this week, on October 9th. We are hoping that EPA will both be submitting comments on the highly flawed FEIS and the National Interest Determination (NID). The time clock on the NID was apparently started on the 26th of August, when the FEIS was released (no letter was released to the public). There are 90-days but any agency can ask for additional information and the NID will be extended. We are hopeful that EPA will ask for the missing analysis, including on pipeline safety, alternative routing, impacts on refinery communities, spill response and alternative, cleaner energy options.

Here is Susan's blog on the FEIS with a link to our fact sheet:  
[http://switchboard.nrdc.org/blogs/sclefkowitz/keystone\\_xl\\_tar\\_sands\\_pipeline\\_1.html](http://switchboard.nrdc.org/blogs/sclefkowitz/keystone_xl_tar_sands_pipeline_1.html).

And here is Susan's blog on the National Interest Determination which also has a link to our fact sheet on the NID:  
<http://switchboard.nrdc.org/blogs/sclefkowitz/Updated%20NID%20advocacy%20document%20September%208%2C%202011.pdf>.

Please let us know what EPAs plans are as this deadline is looming!

We would also like to come in and talk with you as soon as we can. We had a good meeting with EPA staff last week – Arvin Ganesan, Michael Goo and Alex Barron but EPA's comment plans were not confirmed.

Finally, we wanted to make sure you were aware of the growing scandal around the State Department's communications with Paul Elliott, TransCanada's lobbyist and Secretary Clinton's former campaign chief in 2008. Here is today's story from the Washington Post which specifically references EPA:  
[http://www.washingtonpost.com/business/economy/keystone-pipeline-e-mails-show-friendly-exchanges/2011/10/02/gIQAXzRdHL\\_story.html](http://www.washingtonpost.com/business/economy/keystone-pipeline-e-mails-show-friendly-exchanges/2011/10/02/gIQAXzRdHL_story.html). This makes it even more crucial that EPA weigh in to request objective analysis and to assure the public that the pipeline permit process is a legitimate one.

Hope you also saw the editorial in the NYTs today. It is their 4th against the pipeline (copied below).

All best,

Liz

<http://www.nytimes.com/2011/10/03/opinion/say-no-to-the-keystone-xl.html?ref=opinion>

Editorial

Say No to the Keystone XL

Published: October 2, 2011

Unless good sense intervenes, it looks increasingly likely that the State Department will approve the Keystone XL pipeline, which would carry a coarse, acidic crude oil from northern Alberta in Canada to refineries on the Gulf Coast of Texas. That would be a mistake.

In August, the State Department, which has authority because the pipeline crosses an international boundary, released its final environmental impact statement on the project. It found that the Keystone XL would have “no significant impact” on land and water resources along its route. We, and many others, are skeptical.

An existing pipeline carrying tar sands oil — owned by TransCanada, the Keystone XL's operator — was forced to shut down for repairs after springing two leaks last May in North Dakota and Kansas. That is one reason why Dave Heineman, Nebraska's Republican governor, has asked that the new pipeline be rerouted. He fears a spill could pollute the Ogallala Aquifer, a crucial water source beneath the Great Plains.

Unfortunately, the State Department appears to be more persuaded by proponents who claim that the pipeline will help reduce America's dependence on oil from politically troubled sources in the Middle East. We are skeptical about that, too.

What pipeline advocates — including big-oil lobbyists and House Republicans who have tried to force an early, favorable decision — fail to mention is that much of the tar sands oil that would be refined on the Gulf Coast is destined for export. Six companies have already contracted for three-quarters of the oil. Five are foreign, and the

business model of the one American company — Valero — is geared toward export.

The report also fails to acknowledge that while greenhouse gas emissions caused by tar sands production have declined over the last two decades, the extraction and production of tar sands oil still causes far more emissions than conventional crude.

We have considerable sympathy for one argument: that construction of the pipeline would bring jobs at a time of great economic uncertainty. TransCanada has said the 2,000-mile line would create 20,000 jobs in the United States. The State Department concludes that the real number may be closer to 6,000 jobs.

Whichever estimate is right, it should be clear, from many studies, that the best hope for long-term job creation will come from the development of renewable and alternative energy sources. Some of Keystone's most vocal supporters are determined to slash government support for new companies developing clean-energy technologies.

Adding it all up, we do not think that the benefit from Keystone XL outweighs the certain damages and potential risks: the stripping of the Canadian boreal forest, the further carbon-loading of the atmosphere, and the threat to the Midwest's water supplies.

There is also the larger question of whether this country should keep conducting business as usual — that is, succumbing to the status quo of politics and big oil — or whether it will seriously grapple with the reality of climate change. We again urge Secretary of State Hillary Rodham Clinton to say no to the Keystone XL.

Liz Barratt Brown

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**Cc:** "Droitsch, Danielle" [ddroitsch@nrdc.org]  
**From:** "Droitsch, Danielle"  
**Sent:** Mon 3/12/2012 8:10:13 PM  
**Subject:** Meeting request for March 19 or 20  
[www.NRDC.org](http://www.NRDC.org)  
[ddroitsch@nrdc.org](mailto:ddroitsch@nrdc.org)

Susan, Cliff, Alex, and Michael,

On behalf of NRDC, we'd like to request a meeting with you for either Monday or Tuesday next week (March 19 or 20).

We have a special guest in town from the Lubicon Cree First Nation in Northern Alberta who we would like have you meet. And we would like to also touch base on the forthcoming application from TransCanada for the northern segment of Keystone XL.

At this time, we are available most anytime during those two days. Please get back to me at your earliest convenience.

Melina Laboucan-Massimo is Lubicon Cree from Northern Alberta, Canada. For the past 10 years she has worked as an advocate for Indigenous rights. She has studied and worked in Australia, Brasil, Mexico, and Canada focusing on Indigenous rights and culture, resource extraction, and international diplomacy. She has produced short documentaries, researched, and worked on topics ranging from the tar sands, inherent treaty rights, water issues to cultural appropriation. For the past five years, Melina has been a tar sands Climate and Energy campaigner for Greenpeace on the issue of tar sands extraction in Alberta. She has worked with a variety of First Nations who are concerned with the impacts of tar sands on their communities as well as impacts from pipelines such as the Enbridge and Keystone XL pipelines.

Best,

Danielle

Danielle Droitsch | Senior Attorney

Canada Project Director, International Program

Natural Resources Defense Council | [www.NRDC.org](http://www.NRDC.org)

1152 15th St. NW, Suite 300 | Washington, DC 20005

phone: 202.513.6243 | cell: 202.413.0193 | email: [ddroitsch@nrdc.org](mailto:ddroitsch@nrdc.org)

Blog: <http://switchboard.nrdc.org/blogs/ddroitsch/>

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**Cc:** Alex Barron/DC/USEPA/US@EPA;Cliff Rader/DC/USEPA/US@EPA;Michael Goo/DC/USEPA/US@EPA[]; liff Rader/DC/USEPA/US@EPA;Michael Goo/DC/USEPA/US@EPA[]; ichael Goo/DC/USEPA/US@EPA[]  
**From:** "Droitsch, Danielle"  
**Sent:** Mon 3/12/2012 9:16:44 PM  
**Subject:** RE: Meeting request for March 19 or 20  
[image001.gif](#)  
[www.NRDC.org](http://www.NRDC.org)  
[ddroitsch@nrdc.org](mailto:ddroitsch@nrdc.org)  
<http://switchboard.nrdc.org/blogs/ddroitsch/>

Thanks Susan.

Maybe next time.

From: Susan Bromm [mailto:Bromm.Susan@epamail.epa.gov]  
Sent: Monday, March 12, 2012 4:38 PM  
To: Droitsch, Danielle  
Cc: Alex Barron; Cliff Rader; Michael Goo  
Subject: Re: Meeting request for March 19 or 20

Danielle,

My apologies but neither Cliff nor I will be available on the 19th or 20th. Cliff will be on vacation and I will be on travel.

Regards,  
Susan

"Droitsch, Danielle" ---03/12/2012 04:10:16 PM---Susan, Cliff, Alex, and Michael, On behalf of NRDC, we'd like to request a meeting with you for eith

From: "Droitsch, Danielle" <ddroitsch@nrdc.org>  
To: Susan Bromm/DC/USEPA/US@EPA, Cliff Rader/DC/USEPA/US@EPA, Alex Barron/DC/USEPA/US@EPA, Michael Goo/DC/USEPA/US@EPA  
Cc: "Droitsch, Danielle" <ddroitsch@nrdc.org>  
Date: 03/12/2012 04:10 PM  
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Best,  
Danielle

Danielle Droitsch | Senior Attorney  
Canada Project Director, International Program  
Natural Resources Defense Council | [www.NRDC.org](http://www.NRDC.org)  
1152 15th St. NW, Suite 300 | Washington, DC 20005  
phone: 202.513.6243 | cell: 202.413.0193 | email: [ddroitsch@nrdc.org](mailto:ddroitsch@nrdc.org)  
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▼

**To:** "Droitsch, Danielle" [ddroitsch@nrdc.org]  
**Cc:** CN=Alex Barron/OU=DC/O=USEPA/C=US@EPA;CN=Cliff Rader/OU=DC/O=USEPA/C=US@EPA;CN=Michael Goo/OU=DC/O=USEPA/C=US@EPA[]; N=Cliff Rader/OU=DC/O=USEPA/C=US@EPA;CN=Michael Goo/OU=DC/O=USEPA/C=US@EPA[]; N=Michael Goo/OU=DC/O=USEPA/C=US@EPA[]  
**Bcc:** []  
**From:** CN=Susan Bromm/OU=DC/O=USEPA/C=US  
**Sent:** Mon 3/12/2012 8:38:22 PM  
**Subject:** Re: Meeting request for March 19 or 20  
[www.NRDC.org](http://www.NRDC.org)  
[ddroitsch@nrdc.org](mailto:ddroitsch@nrdc.org)

Danielle,

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Regards,  
Susan

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**To:** Susan Bromm/DC/USEPA/US@EPA, Cliff Rader/DC/USEPA/US@EPA, Alex Barron/DC/USEPA/US@EPA, Michael Goo/DC/USEPA/US@EPA  
**Cc:** "Droitsch, Danielle" <ddroitsch@nrdc.org>  
**Date:** 03/12/2012 04:10 PM  
**Subject:** Meeting request for March 19 or 20

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**Cc:** "Droitsch, Danielle" [ddroitsch@nrdc.org]  
**From:** "Droitsch, Danielle"  
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**Subject:** Meeting request for March 19 or 20  
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**From:** "Droitsch, Danielle"  
**Sent:** Mon 3/12/2012 9:16:44 PM  
**Subject:** RE: Meeting request for March 19 or 20  
[image001.gif](#)  
[www.NRDC.org](http://www.NRDC.org)  
[ddroitsch@nrdc.org](mailto:ddroitsch@nrdc.org)  
<http://switchboard.nrdc.org/blogs/ddroitsch/>

Thanks Susan.

Maybe next time.

From: Susan Bromm [mailto:Bromm.Susan@epamail.epa.gov]  
Sent: Monday, March 12, 2012 4:38 PM  
To: Droitsch, Danielle  
Cc: Alex Barron; Cliff Rader; Michael Goo  
Subject: Re: Meeting request for March 19 or 20

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To: Susan Bromm/DC/USEPA/US@EPA, Cliff Rader/DC/USEPA/US@EPA, Alex Barron/DC/USEPA/US@EPA, Michael Goo/DC/USEPA/US@EPA  
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**To:** Cynthia Giles-AA/DC/USEPA/US@EPA[]  
**Cc:** Susan Bromm/DC/USEPA/US@EPA;Cliff Rader/DC/USEPA/US@EPA;"Droitsch, Danielle" [ddroitsch@nrdc.org]; liff Rader/DC/USEPA/US@EPA;"Droitsch, Danielle" [ddroitsch@nrdc.org]; Droitsch, Danielle" [ddroitsch@nrdc.org]  
**From:** "Droitsch, Danielle"  
**Sent:** Wed 1/9/2013 5:05:41 PM  
**Subject:** Meeting request  
[www.NRDC.org](http://www.NRDC.org)  
[ddroitsch@nrdc.org](mailto:ddroitsch@nrdc.org)

Cynthia,

On behalf of NRDC, I am writing to request a meeting with you and other EPA enforcement and compliance staff to discuss new research that is being released next week on the climate impacts from Keystone XL.

NRDC, 350.org, the Pembina Institute, and Oil Change International are co-releasing two reports that outline how climate emissions from Keystone XL will be significant and also new research how the climate emissions from KXL will be worse than originally feared. We have a delegation of experts and scientists that will be in town on Thursday, January 17 and we would like to meet with you and members of the EPA staff. Will you be available that afternoon to meet with the delegation? We are available anytime noon onwards. There is also a possibility our delegation could stay until the morning of January 18.

The delegation as of today (will likely include 1 more climate scientist) includes:

Nathan Lemphers, Pembina Institute (Canadian environmental think tank)

Lorne Stockman, author of new pet coke report (Oil Change International)

Canadian climate scientist: Dr. Danny Harvey, University of Toronto

Many thanks and I look forward to hearing back from you.

Best,

Danielle

Danielle Droitsch | Senior Attorney

Canada Project Director, International Program

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**To:** Susan Bromm/DC/USEPA/US@EPA;Arvin Ganesan/DC/USEPA/US@EPA[]; rvin Ganesan/DC/USEPA/US@EPA[]  
**Cc:** "Droitsch, Danielle" [ddroitsch@nrdc.org]  
**From:** "Swift, Anthony"  
**Sent:** Wed 2/13/2013 4:06:03 PM  
**Subject:** NRDC Rebuttal to State's Climate Findings for KXL  
[NRDC Rebuttal to State Department 2011 Climate Findings for KXL 2.13.pdf](#)  
[www.NRDC.org](http://www.NRDC.org)  
<http://switchboard.nrdc.org/blogs/aswift/>

Hi Arvin and Susan,

In advance of our meeting tomorrow afternoon, we wanted to send you this draft memo addressing flaws in the State Department's 2011 climate findings for Keystone XL. Of course, we'll be happy to discuss this analysis in more detail tomorrow and are open to provide any additional information that may be useful to you or your staff during the environmental review process for that project.

We're looking forward to our meeting tomorrow.

Best,

Anthony Swift | Attorney, International Program

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phone: 202.513.6276 | cell: 215.478.4967 |

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**DRAFT**  
**NRDC Backgrounder**  
**A Rebuttal to the U.S. State Department's 2011 Conclusions**  
**Regarding the Climate Impacts from the Keystone XL Tar Sands Pipeline**  
**February 2013**

**I. Introduction**

The U.S. decision on whether to approve the Keystone XL pipeline will have a direct bearing on whether the tar sands industry can triple production from 2 million barrels per day (bpd) to 6 million bpd by 2030, with their attendant increases in carbon pollution.<sup>1</sup>

The significant growth being proposed by the tar sands industry requires a massive expansion of capacity to transport tar sands oil. The Keystone XL pipeline is a necessary step for tar sands expansion, and given current pipeline capacity constraints is also significant as the first test of whether such expansion can move forward.<sup>2</sup> But in addition to Keystone XL, the tar sands industry's ambitious production targets would necessitate the construction of every new pipeline currently proposed plus millions of barrels worth of additional transport capacity. Moreover, by raising tar sands prices and market expectations, Keystone XL would greatly encourage overall expansion. In other words, Keystone XL would enable a significant amount of tar sands expansion that otherwise would not occur.<sup>3</sup>

But there is a persistent myth that Keystone XL would not fundamentally affect levels of tar sands production. In fact, the mistaken assumption has been that as long as demand for oil continues, tar sands development will continue to be developed. In August 2011, the State Department released its Final Environmental Impact Statement evaluating the Keystone XL tar sands pipeline and found that building and operating the pipeline would not increase global greenhouse gas emissions.<sup>4</sup> As evidence for this proposition, State has pointed to the existence of other transportation projects such as pipelines and rail, concluding those options would enable tar sands production – even in the absence of

<sup>1</sup> Canadian Association of Petroleum Producers (CAPP), Crude Oil, Forecasts, Markets and Pipelines, June 2012, pg. 38, <http://www.capp.ca/forecast/Pages/default.aspx>; Oil Sands Developers Group. Oil Sands Project List. October 2012. <http://www.oilsandsdevelopers.ca/wp-content/uploads/2012/10/Oil-Sands-Project-List-October-2012.pdf>.

<sup>2</sup> NRDC has estimated that even if every pipeline that has been formally proposed moves forward – an unlikely proposition – the tar sands industry will still need an additional 2 million barrels a day of capacity to help industry realize its expansion plans.

<sup>3</sup> The construction of other proposed pipelines would not be sufficient to allow for the industry's expansion goals without the construction of Keystone XL. Industry will need to double the current capacity of pipelines out of Alberta – increasing takeaway capacity for all Western Canadian crude, adding between 3.5 to 4 million bpd of additional capacity to its pipeline system for export to other Canadian provinces and the United States. To accomplish this, the Canadian oil industry will need to permit all recently proposed tar sands pipelines– including Keystone XL (830,000 bpd), Northern Gateway (525,000 bpd), the Alberta Clipper Expansion (120,000 bpd), the reversal of the Montreal to Portland pipeline (300,000 bpd) and the TransMountain expansion (450,000 bpd). Even if all these planned pipelines were built, there would still not be enough capacity to handle the growth that companies have laid out in their expansion plans. Because of this, a delay or defeat of any of these pipelines would be a significant blow to tar sands production and profitability.

<sup>4</sup> U.S. Department of States, *Final Environmental Impact Statement: Keystone XL Project*. August 26, 2011, [http://keystonepipeline-xl.state.gov/archive/dos\\_docs/feis/vol1/index.htm](http://keystonepipeline-xl.state.gov/archive/dos_docs/feis/vol1/index.htm).

Keystone XL. The State Department analysis relied heavily on a U.S. Department of Energy (DOE) commissioned analysis by EnSys Energy (EnSys), a consulting firm that found that a permitting decision on Keystone XL would have no impact on tar sands production or greenhouse gas emissions.

This memo outlines five key arguments that detail why the State Department must revisit its previous conclusion that Keystone XL would not affect tar sands production.

1. The State Department's EnSys analysis made incorrect assumptions about the rate at which tar sands production would exceed pipeline capacity.
2. The State Department did not identify the impact that pipeline constraints would have on tar sands prices or evaluate how current pricing discounts will affect future tar sands production.
3. Even if every other pipeline proposal moves ahead, there will still be insufficient pipeline capacity for tar sands expansion plans.
4. The State Department's assumption that rail transport would enable tar sands growth is inaccurate.
  - a. EnSys incorrectly assumed that rail transport for tar sands would follow a similar growth track as rail expansion for Bakken oil.
  - b. EnSys substantially underestimated rail costs to the Gulf Coast and has likely underestimated costs to the British Columbia West Coast.
  - c. Tar sands transport to British Columbia's coastal ports via rail would require new infrastructure and face significant political opposition
5. The oil industry and financial community recognize Keystone XL's central role in enabling tar sands production growth

## II. The State Department's 2011 Findings on the Climate Impacts from Keystone XL

The State Department's evaluation of Keystone XL's impact on tar sands production and greenhouse gas emissions was based on two reports published by EnSys during the environmental review process for TransCanada's 2008 Presidential Permit application. In its first report, published in December 2010, EnSys modeled the impact of several scenarios on tar sands production over a twenty year period. Based on an initial assumption that Western Canadian Sedimentary Basin (WCSB) crude production would reach 4.8 million barrels per day by 2030, EnSys forecast that Alberta would only need 850,000 bpd of additional transportation capacity without Keystone XL.<sup>5</sup> The report then concluded in the event of a rejection of Keystone XL, other proposed transportation options could provide adequate transportation capacity for that 850,000 bpd to support the tar sands industry's growth plans through 2030.<sup>6</sup>

In August 2011, EnSys published an update to its initial report. Its updated analysis had to reconcile its initial analysis with three major factors which it had not anticipated in its initial forecast. First, WCSB crude production had increased more quickly than EnSys had assumed and the Canadian Association of Petroleum Producers (CAPP) had increased its 2030 production forecast from 4.8 million bpd to 5.5 million bpd.<sup>7</sup> Second, oil production in the Bakken had increased much more quickly than EnSys anticipated, competing with WCSB. Finally, crude transit constraints in Cushing, Oklahoma had created sustained pricing discounts for WCSB crude. Despite these changes, the update did not materially change the report's conclusions that other transportation would emerge to transport tar sands if Keystone XL were rejected. In the 2011 update, the assumption was that if other pipeline options did not move forward, rail transportation would provide up to 1.4 million bpd of cross-border capacity for WCSB crude in absence of additional pipeline capacity.<sup>8</sup>

## III. Tar sands production is a significant driver of global greenhouse gas emissions

The tar sands industry has proposed expansion plans that would triple production by 2030. Based on the DOE National Energy Technology Laboratory's estimates of the well-to-wheel (WTW) emissions of tar sands, industry's plan would also triple carbon emissions from the production and combustion of tar sands -- an increase from over 300 MMT to over 900 MMT by 2030.<sup>9</sup>

<sup>5</sup> EnSys Energy, Keystone XL Assessment, December 23, 2010, pg. 30, <http://keystonepipeline-xl.state.gov/documents/organization/182421.pdf>.

<sup>6</sup> *Id.*, pg. 116-118,

<sup>7</sup> EnSys Energy, Keystone XL Assessment – No Expansion Update, August 12, 2011, pg. 3, [keystonepipeline-xl.state.gov/documents/organization/182263.pdf](http://keystonepipeline-xl.state.gov/documents/organization/182263.pdf).

<sup>8</sup> *Id.*, pg. 11.

<sup>9</sup> In the State Department Final Environmental Impact Statement for Keystone XL, the agency cited NETL for the proposition that displacing 100,000 bpd of Middle Eastern Sour with Western Canadian Sedimentary Basin (WCSB) tar sands would increase incremental emissions by 2.5 MMT per year (State Department, Final EIS for Keystone XL, Aug. 2011, Table 3.14-3.11, <http://keystonepipeline-xl.state.gov/documents/organization/182069.pdf>). This 2.5 million metric ton (MMT) annual incremental increase in emissions was due to a difference of 17 g CO<sub>2</sub>e/MJ LHV gasoline between Saudi Arabia and Canadian tar sands. Extrapolating from the Department of Energy's (DOE) National Energy Technology Laboratory's (NETL) Well to Wheel (WTW) value of 106.3 g CO<sub>2</sub>e/MJ LHV gasoline for Canadian tar sands, 100,000 bpd of tar sands' WTW annual carbon emissions would be 15.6 MMT (*id.*, Table 3.14-3.10). Current CAPP expansion plans call for 4 million bpd of increased tar sands production by 2030— or 624 million metric tons. In addition to WTW emissions, terrestrial land use impacts of tar sands production are

It's also important to note that even the emissions associated with the amount of oil Keystone XL itself would carry are more significant than they may at first appear. The carrying capacity of Keystone XL is 830,000 barrels a day. EPA has estimated that Keystone XL would increase annual emissions by up to 27.6 MMt CO<sub>2</sub>e annually. This is the equivalent of seven coal-fired power plants operating continuously or having 6.2 million cars on the road for 50 years.<sup>10</sup>

Moreover, new research by Oil Change International shows carbon emissions associated with tar sands are higher than currently estimated.<sup>11</sup> In particular, tar sands refining produces significant volumes of petroleum coke (petcoke), a high-carbon refining byproduct that is increasingly being used as a cheaper, more carbon-intensive substitute to coal. Gulf Coast refineries, rather than stockpiling and disposing of petcoke as a byproduct, export the majority of petcoke internationally where it is used as a coal substitute. According to Oil Change International, Keystone XL will produce enough petcoke to fuel 5 U.S. coal plants. These carbon emissions from this petcoke have not been previously factored into a climate analysis of the pipeline and will raise total emissions of the pipeline by 13 percent

#### IV. Evidence that the State Department's EnSys Analysis is Flawed

Data has accumulated over the past two years which clearly demonstrates the assumptions EnSys made to reach its conclusion were critically flawed. As banks, financial analysts, and industry commentators now recognize, Keystone XL is critical to the expansion of tar sands production and the increased greenhouse gas emissions associated with it.

Indeed, a lack of pipeline capacity from the tar sands region is already curtailing the pace of expansion. Banks, financial analysts and industry sources acknowledge that tar sands expansion has already slowed due to pipeline constraints. Industry is now revising its production goals because proposed projects are not moving forward. In other words, without Keystone XL, tar sands expansion will be significantly curtailed.

Significantly, market analysts are lowering their forecasts of likely production of tar sands in 2030 by as much as 2.4 million bpd.<sup>12</sup> Currently, industry produces approximately 2 million barrels per day and has targeted growth to 6 million barrels a day by 2030.<sup>13</sup> Constraining industry's growth by 2.4 million barrels a day by 2030 is equivalent to avoiding nearly 400 million metric tons of carbon emissions.<sup>14</sup>

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expected to add significant greenhouse gas emission through reduced sequestration potential of Boreal forests and methane releases from the region's peatlands.

<sup>10</sup> Environmental Protection Agency, Comments on Draft Environmental Impact Statement for Keystone XL project, July 16, 2010, [http://yosemite.epa.gov/oeca/webeis.nsf/\(PDFView\)/20100126/\\$file/20100126.PDF](http://yosemite.epa.gov/oeca/webeis.nsf/(PDFView)/20100126/$file/20100126.PDF). The number of cars was calculated by NRDC considering CAFÉ standards for passenger vehicles, EPA average miles per vehicle, and assumption of Keystone XL pipeline at 830,000 barrels per day.

<sup>11</sup> Oil Change International. Petroleum Coke: The Coal Hiding in the Tar Sands, January 2013. <http://priceofoil.org/wp-content/uploads/2013/01/OCI.Petcoke.FINALSCREEN.pdf>

<sup>12</sup> Hussain, Yadullah. "Oil sands producers could feel squeeze in crowded market" *Financial Post* 16 August 2012. <http://business.financialpost.com/2012/08/16/oil-sands-producers-could-feel-squeeze-in-crowded-market/>

<sup>13</sup> Canadian Association of Petroleum Producers. *Crude Oil: Forecasts, Markets and Pipelines*. CAPP Report, Page 37; June 2012. <http://www.capp.ca/getdoc.aspx?DocId=209546&DT=NTV>  
Canadian Association of Petroleum Producers (CAPP), CAPP Crude Oil Forecast, Markets & Pipelines Report, 37, June 2012.

<sup>14</sup> In the State Department Final Environmental Impact Statement for Keystone XL, the agency cited NETL for the proposition that displacing 100,000 bpd of Middle Eastern Sour with Western Canadian Sedimentary Basin (WCSB)



**1. The State Department's EnSys analysis made incorrect assumptions about the rate at which tar sands production would exceed pipeline capacity.**

Tar sands production has increased far more rapidly than assumed in either the initial State Department EnSys report or its 2011 update. In fact, the tar sands industry now predicts production over 2 million bpd above what the EnSys analysis originally estimated in 2010. As a result, emerging pipeline capacity constraints will be significantly greater than originally estimated.

In its *Keystone XL Assessment – Final Report* published in December 2010, EnSys used CAPP's 2010 production forecast to determine whether sufficient export pipeline capacity to support tar sands production through 2030. In 2010, CAPP forecast that WCSB production would reach 4.8 million bpd by 2030.<sup>15</sup> Based on existing pipeline capacity of 3.5 million bpd and projected Albertan refinery capacity of 0.46 million bpd, EnSys estimated a shortage of 850,000 barrels of day of pipeline capacity.<sup>16</sup>

In its 2011 update, EnSys revised its estimates in light CAPP's 2011 forecasts showing that tar sands production was expected to increase at a more rapid pace than predicted in 2010, increasing its 2030 production estimates from 4.8 million bpd to 5.5 million bpd.<sup>17</sup> This increase in production forecasts increased the need for additional pipeline capacity to 1.4 million bpd after accounting for increased Canadian refinery capacity.<sup>18</sup> Since the EnSys 2011 update was published, CAPP made an even more substantial increase to its production forecast, estimating that WCSB crude production would reach 6.9 million bpd – over 2 million bpd above what EnSys originally considered in its analysis in 2010 and 1.4 million bpd above its 2011 update.<sup>19</sup>

With these updated tar sands production numbers, the pipeline capacity shortfall went from 850,000 bpd to 3.2 million bpd,<sup>20</sup> a significantly greater pipeline capacity shortage than originally estimated. For

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tar sands would increase incremental emissions by 2.5 MMT per year (State Department, Final EIS for Keystone XL, Aug. 2011, Table 3.14-3.11, <http://keystonepipeline-xl.state.gov/documents/organization/182069.pdf>). This 2.5 million metric ton (MMT) annual incremental increase in emissions was due to a difference of 17 g CO<sub>2</sub>e/MJ LHV gasoline between Saudi Arabia and Canadian tar sands. Extrapolating from the Department of Energy's (DOE) National Energy Technology Laboratory's (NETL) Well to Wheel (WTW) value of 106.3 g CO<sub>2</sub>e/MJ LHV gasoline for Canadian tar sands, 100,000 bpd of tar sands' WTW annual carbon emissions would be 15.6 MMT (id., Table 3-14-3.10). Reducing tar sands production by 2.4 million bpd by 2030 would be the equivalent of a 374 million metric tons. In addition to WTW emissions, the increased emissions from petroleum coke production and terrestrial land use impacts of tar sands production are expected to add significant greenhouse gas emission through reduced sequestration potential of Boreal forests and methane releases from the region's peatlands – this figure does not include those impacts; Hussain, Yadullah. "Oil sands producers could feel squeeze in crowded market" *Financial Post* 16 August 2012. <http://business.financialpost.com/2012/08/16/oil-sands-producers-could-feel-squeeze-in-crowded-market/>

<sup>15</sup> EnSys, *Keystone XL Assessment*, Dec. 23, 2010, pg. 30.

<sup>16</sup> All existing pipelines have a nameplate capacity of 3.9 million bpd, but it is more likely that these pipelines will operate at 90% nameplate capacity, or 3.5 million bpd. EnSys Assessment, pg. 32.

<sup>17</sup> EnSys, *No-Expansion Update*, Aug. 12, 2011.

<sup>18</sup> *Id.*, pg. 77. The assumption was made after accounting for a 150,000 bpd refinery proposal in Alberta. Pipeline capacity at full nameplate would be 1.2 million bpd, but accounting for the more likely scenario articulated by EnSys in which pipelines operate at 90% nameplate capacity, the ultimate shortfall would be 1.55 million bpd.

<sup>19</sup> Canadian Association of Petroleum Producers, *Crude Oil, Forecast, Markets & Pipelines*, June 2012, pg. 38, <http://www.capp.ca/forecast/Pages/default.aspx>

<sup>20</sup> This new estimated was made after accounting for a 150,000 bpd refinery proposal in Alberta.

both its 2010 report and 2011 update, EnSys concluded that in a business as usual scenario, even in the absence of Keystone XL (830,000 bpd of capacity), other proposed transportation projects would enable WSCB crude production.<sup>21</sup> These potential transportation alternatives included Enbridge's proposed Northern Gateway pipeline through British Columbia (525,000 bpd), Kinder Morgan's proposed expansion of its TransMountain pipeline through Vancouver (400,000 bpd), Enbridge's potential expansion of its Alberta Clipper pipeline (350,000 bpd).<sup>22</sup> EnSys also made assumptions that industry could add as much as 100,000 bpd of rail capacity.<sup>23</sup> Even if all of these pipeline and rail projects moved ahead (an unlikely proposition as we discuss below), it would not be enough to meet the projected pipeline capacity shortfall of 3.2 million bpd.

**2. The State Department did not identify the impact that pipeline constraints would have on tar sands prices or evaluate how current pricing discounts will affect future tar sands production.**

The State Department's EnSys analysis failed to identify or evaluate the effect that lower prices of tar sands would have on investment in future tar sands production. The analysis did not consider either Keystone XL's role in resolving pipeline capacity constraints or how relieving those constraints would act to increase the price of tar sands and signal investment in expanded tar sands production. Because of the high breakeven prices necessary to justify new tar sands production projects, investment in these expansion projects is particularly dependent on the maintenance of robust tar sands prices. The approval of Keystone XL would increase tar sands prices and signal new and expanded production.<sup>24</sup> Alternatively, the rejection of Keystone XL will signal sustained price discounts for tar sands production, thereby halting many new tar sands expansion projects currently moving through the regulatory approval process and resulting in a substantial reduction of tar sands expansion through 2030.

*How tar sands pricing impacts tar sands production*

Continued constrained pipeline capacity has had a significant impact on the price of tar sands oil which in turn will have a significant impact on investment in new tar sands production projects. While sunk investments in operating tar sands mining and in situ facilities allow them to continue operating until prices reach some point below \$30 a barrel, new tar sands projects require much higher prices to move ahead.<sup>25</sup> New tar sands mines require a break-even price of between \$85 to \$95 a barrel to justify new investment while in situ facilities require a break-even price near \$60 per barrel.<sup>26</sup> However, there is currently a steep discount for tar sands crude, or Western Canadian Select, which has brought tar sands prices down to between \$50 and \$60 per barrel.<sup>27</sup> These discounts are expected to persist and deepen over the next few years.

<sup>21</sup> *Id.*, pg. 30.

<sup>22</sup> *Id.*, pg. 30.

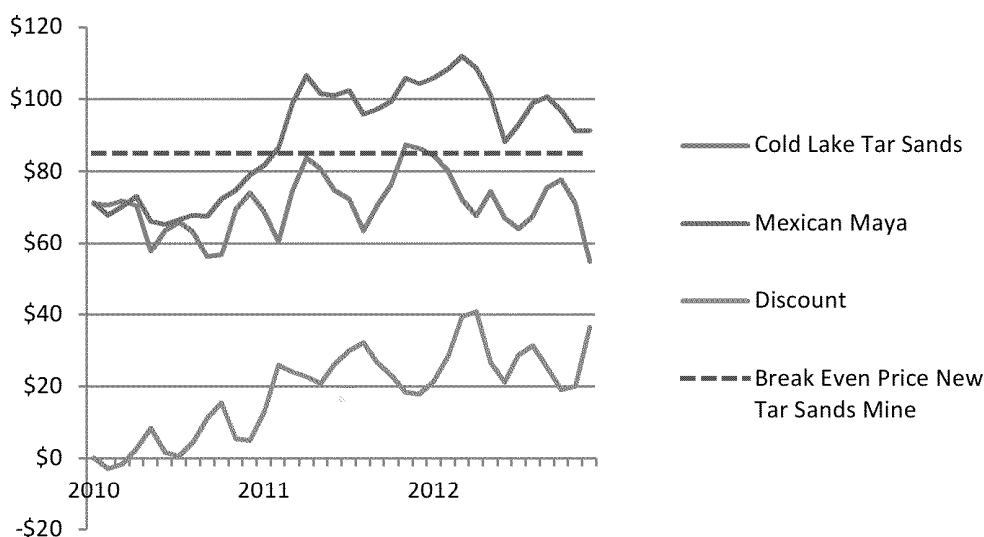
<sup>23</sup> *Id.* at 77.

<sup>24</sup> Goldman Sachs, Global Energy Watch: Commodities Research, January 22, 2013.

<sup>25</sup> Canada heavy oil price nears tipping point—analyst, Reuters, Jan. 15, 2013, <http://www.reuters.com/article/2013/01/15/canada-oil-idUSL2N0AKB6O20130115>.

<sup>26</sup> Pembina Institute: January 28, 2013 "Beneath the Surface" Report (Pg. 57) <http://www.pembina.org/pub/2404>, <http://www.forbes.com/sites/energysource/2012/06/21/oil-price-differentials-caught-between-the-sands-and-the-pipelines/3/>.

<sup>27</sup> Canada heavy oil price nears tipping point—analyst, Reuters, Jan. 15, 2013, <http://www.reuters.com/article/2013/01/15/canada-oil-idUSL2N0AKB6O20130115>.



**Figure 1. The discount between Cold Lake tar sands and Mexican Maya crude (prices in \$ / bbl)**

Because tar sands prices have already fallen below levels required for new production projects, some companies are revisiting their expansion plans. Suncor has abandoned a plan to produce a million bpd by 2020, and has signaled that three of its most important new projects – the proposed tar sands mines in Fort Hills, Voyageur, and Joslyn – are unlikely to proceed.<sup>28</sup> Canadian Natural Resources Ltd has cut capital spending in 2012 by \$680 million from its Horizon tar sands project.<sup>29</sup> This dynamic, if continued, will have a more significant impact on the long term growth of tar sands production.<sup>30</sup> While some tar sands expansion plans may be put on hold, other tar sands projects continue to move ahead because tar sands projects typically take many years to move from proposal to production. In these instances some companies may continue to move forward with production projects that are currently uneconomic due to the discount based on the expectation that Keystone XL will be approved and operational in late 2015.<sup>31</sup>

In the event of a rejection of Keystone XL, tar sands production projects especially newer projects that would expand production will likely be canceled or postponed. In fact, in a recent short term market

<sup>28</sup> Vanderklippe, Nathan. "A Wary Oil Patch Gears Down." *Globe and Mail* 10 August 2012.

<http://www.theglobeandmail.com/globe-investor/wary-oil-patch-gears-down/article4470876/m>

<sup>29</sup> Vanderklippe, Nathan. "A Wary Oil Patch Gears Down." *Globe and Mail* 10 August 2012.

<http://www.theglobeandmail.com/globe-investor/wary-oil-patch-gears-down/article4470876/m>

<sup>30</sup> When the discount between tar sands and similar international heavy crudes exceeds \$30 per barrel cost of rail, producers that have already invested significant capital in a project may be justified in bearing the significant cost of rail to maximize the value of their production so long as it their netback price exceeds their shut-in price. However, producers that have not invested capital in a project will not do so unless they expect values for their product to exceed their break-even costs.

<sup>31</sup> Canada heavy oil price nears tipping point—analyst, Reuters, Jan. 15, 2013,

<http://www.reuters.com/article/2013/01/15/canada-oil-idUSL2N0AKB6O20130115>. The distinction between break-even prices for new facilities and prices for current production is an important one. The significant investment in initial infrastructure for tar sands mining facilities and in situ wells cause these projects to have relatively high break even prices. However, once these initial investments are made, the incremental costs of producing tar sands from mining and in situ facilities is significantly lower—potentially below \$30 per barrel.

analysis, RBC Dominion Securities Inc., called Keystone XL “a key supply chain link” and estimated that in the event of a rejection of Keystone XL, tar sands production growth would be reduced by 450,000 bpd by 2017, as vulnerable production projects by BlackPearl Resources, MEG Energy, Cenovus Energy and Sunshine Oil are deferred.<sup>32</sup> CIBC forecasts that by 2030, market constraints will reduce tar sands production by as much as 2.4 million bpd by 2030.<sup>33</sup>

As a recent report by the consulting firm Wood McKenzie recently concluded, “The potential for wide and volatile differentials could result in operators delaying or cancelling unsanctioned projects... A lack of visibility on available transportation capacity and, in turn, the prices that may ultimately be achieved could impact oil sands projects’ commercial viability.”<sup>34</sup>

#### *EnSys assessment of pricing impacts*

The State Department’s EnSys analysis underestimated the discount that would affect the price of tar sands crude is therefore not accounting for the potential impacts on long-term production. EnSys evaluated a scenario where pipeline capacity constraints shut in 1.4 million bpd of production but assumed that even in this scenario price discounts would not exceed the \$10-\$20 per barrel range.<sup>35</sup> In addition to substantially underestimating the potential magnitude of a discount caused by transportation constraints, EnSys ignored the impact of price discounts on the economics and feasibility of new tar sands production projects.

#### *Actual pricing impacts on production from limited pipeline capacity*

In reality, the deep and persistent discount on tar sands oil caused in large part to a lack of pipeline capacity demonstrates that Keystone XL would play a major role to help expand tar sands production.<sup>36</sup> Pipeline capacity constraints across the Canadian border have already resulted in a substantially larger discount for Canadian crude than EnSys forecast in its most transport constrained scenario.<sup>37</sup> Tar sands crude, marketed as Western Canadian Select, has recently sold at a discount relative to similar international crudes of over \$45 a barrel – in some cases a discount of 50% of its international value.<sup>38</sup> This discount is already hampering investment in future tar sands production and appears likely to shut in production if it persists.<sup>39</sup>

<sup>32</sup> RBC Dominion Securities Inc., Energy Insights, Keystone XL – Weighing the Outcomes, Feb. 11, 2013.

<sup>33</sup> RBC Dominion Securities Inc. estimated that tar sands growth would be reduced by a third, or 450,000 bpd by 2017, if Keystone XL was rejected, while CIBC estimates that pipeline constraints will reduce production growth by between 1.7 million bpd and 2.4 million bpd by 2030. Globe and Mail, Oil Discount Raises Alarms for Chinese Firms, Feb. 12, 2013, <http://www.theglobeandmail.com/globe-investor/oil-discount-raises-alarms-for-chinese-firms/article8471597/>; Hussain, Yadullah. “Oil sands producers could feel squeeze in crowded market.” *Financial Post* 16 August 2012. <http://business.financialpost.com/2012/08/16/oil-sands-producers-could-feel-squeeze-in-crowded-market/>

<sup>34</sup> Reuters, Analysis: Falling oil raises fears for oil sands development, June 4, 2012, <http://mobile.reuters.com/regional/article/idCABRE85314720120604?edition=ca>.

<sup>35</sup> EnSys Update, pg. 11.

<sup>36</sup> Financial Times, Brent-WTI price differential tops \$20, Feb. 5, 2012, <http://www.ft.com/intl/cms/s/0/a5a77420-6fb1-11e2-956b-00144feab49a.html#axzz2K8ly1ww5>. Pipeline constraints from Cushing, Oklahoma to refineries of the Gulf Coast has resulted in a \$15-\$20 discount for West Texas Intermediate crude relative to international prices for similar Brent Crude,

<sup>37</sup> Bloomberg, Scotiabank's Commodity Price Index Retreats in December, Jan. 29, 2013, <http://www.bloomberg.com/article/2013-01-29/aqOjtlbBlfIQ.html>.

<sup>38</sup> Bloomberg, Valero Looking at Rail, Barges to Ship Canadian Crude to Gulf, Jan. 29, 2013, <http://www.bloomberg.com/news/2013-01-29/valero-looking-at-rail-barges-to-ship-canadian-crude-to-gulf.html>.

<sup>39</sup> Goldman Sachs, Global Energy Watch: Commodities Research, January 22, 2013.

### 3. Even if every other pipeline proposal moves ahead, there will still be insufficient pipeline capacity for tar sands expansion plans.

Even if every other tar sands pipeline proposal other than Keystone XL moves forward, there will still be insufficient capacity to enable growth for the industry's current plans to reach 6.9 million bpd in production by 2030.<sup>40</sup> As shown in Figure 2, with the exception of Keystone XL, all existing and proposed pipelines from Western Canada provide a total of 5.1 million bpd of capacity. This creates a pipeline capacity shortfall of 1.8 million bpd by 2030. Moreover, many of these pipeline projects face significant political and regulatory burdens with virtually all of the projects unlikely to move ahead in the near term.

"Even if you build every single pipe that's on the table right now...you're still short pipeline capacity... For the growth to continue, all the proposed export pipeline capacity and more will need to be built, and soon." *Andrew Potter, Managing Director, Institutional Equity Research at CIBC World Markets,*<sup>41</sup> Jan. 1, 2013

**Fig. 2 Takeaway capacity gaps in a full pipeline expansion and "No expansion" scenarios**

| Existing and Proposed Pipelines                                                                     | Nameplate Capacity | Operating Capacity (90%) |
|-----------------------------------------------------------------------------------------------------|--------------------|--------------------------|
| - TransMountain (existing)                                                                          | 300,000            | 270,000                  |
| - Keystone I (existing)                                                                             | 591,000            | 531,900                  |
| - Enbridge Mainline (existing)                                                                      | 2,055,000          | 1,849,500                |
| - Express/Milk River/Rangeland (existing)                                                           | 485,000            | 436,500                  |
| - Line 9 Reversal (Proposed)                                                                        | 300,000            | 270,000                  |
| - Enbridge Alberta Clipper Expansion (Proposed)                                                     | 350,000            | 315,000                  |
| - Transmountain Expansion (Proposed)                                                                | 400,000            | 360,000                  |
| - Northern Gateway (Proposed)                                                                       | 525,000            | 472,500                  |
| <b>Full expansion:</b> Pipeline capacity (existing and proposed pipelines – not Keystone XL) (2030) | 5,618,000          | 5,117,400                |
| <b>No expansion:</b> Existing pipelines only (no new pipelines and no Keystone XL)                  | 3,431,000          | 3,087,900                |
| - WCSB Refinery Capacity                                                                            | 612,000            | 612,000                  |
| Western Canadian Crude Production (2030)                                                            | 6,870,000          | 6,870,000                |
| Capacity gap with full expansion (2030)                                                             | -1,252,000         | -1,752,600               |
| Capacity gap with no expansion (2030)                                                               | -2,827,000         | -3,170,100               |

Current alternatives to the Keystone XL for transporting tar sands oil are on a much smaller scale, in much earlier stages of development, and in many cases face such significant opposition that they are

<sup>40</sup> This figure includes 6 million bpd of tar sands and 0.9 million bpd of conventional production. Canadian Association of Petroleum Producers, 2012 CAPP Crude Oil Forecast, Markets & Pipelines Report, 38.

<sup>41</sup> Pipeline export constraints will continue curbing oil industry enthusiasm in 2013, Oil and Gas Insider,

unlikely to move ahead in the next five to ten years, if at all. Many of the proposals for new or expanded pipelines face significant opposition that will significantly delay or prevent their advancement.

**Pipelines to the Canadian West Coast.** Two tar sands pipelines to the Canadian West Coast have been proposed and both are stymied. CIBC, a major Canadian financial services firm, recently concluded that there is a less than 50 percent chance that the West Coast pipelines – proposed by Enbridge and Kinder Morgan – will be built.<sup>42</sup> The projects cannot proceed without necessary easements from First Nations and permits from British Columbia for associated pipeline and shipping infrastructure. The Northern Gateway pipeline is highly unpopular in British Columbia, with 60% of the public opposed to the project.<sup>43</sup> Aboriginal communities have refused to grant necessary easements for the Northern Gateway pipeline threatening the stop the project dead in its tracks. Many conservative thought leaders in Western Canada are now calling for a ‘time-out’ on the pipeline which was originally proposed in 2005.<sup>44</sup> While Kinder Morgan has not yet submitted an application for the expansion of its TransMountain pipeline, its project is likely to see similar levels of opposition from the public and First Nations, and a new set of regulatory hurdles.<sup>45</sup> In order to facilitate the larger volumes of crude associated with an expansion of Kinder Morgan, Vancouver harbor would need to be dredged to permit large capacity supertankers. Constructing new pump stations would require additional permits and easements from British Columbia and First Nations groups.

**U.S. alternative pipeline projects.** There are proposals that would enable more tar sands to be transported to the U.S. Midwest and that could potentially enable new routes to the Canadian and U.S. east coasts. However, these projects are much smaller in size compared with Keystone XL and/or in the very early stages of development. They are therefore not likely to enable major expansion of tar sands in the near term if at all. The two major projects being discussed, Enbridge’s Alberta Clipper expansion and the reversal the Enbridge Line 9 and Montreal-to-Portland pipelines would require modified Presidential Permits and potentially environmental reviews under the National Environmental Policy Act (NEPA). The Alberta Clipper expansion proposed by Enbridge would only have a fraction of

<sup>42</sup> The major proposed tar sands pipeline, Northern Gateway, will likely be contested in the courts for many years by citizens and legally powerful First Nations groups. The other tar sands pipeline, Kinder Morgan’s TransMountain Expansion, has not even submitted an application to the provincial or federal government. While Kinder Morgan has not yet submitted an application for the expansion of its TransMountain pipeline, its project is likely to see similar levels of opposition from the public and First Nations, and a new set of regulatory hurdles. In order to facilitate the larger volumes of crude associated with an expansion of Kinder Morgan, Vancouver harbor would need to be dredged to permit large capacity supertankers. Constructing new pump stations would require additional permits and easements from British Columbia and First Nations groups.

<sup>43</sup> Marketwire, New Poll Shows 60% of British Columbians Oppose Enbridge Northern Gateway Pipeline Project, December 11, 2012, <http://www.marketwire.com/press-release/new-poll-shows-60-british-columbians-oppose-enbridge-northern-gateway-pipeline-project-1736467.htm>.

<sup>44</sup> Deborah Yedlin, “Yedlin: Is it time for a ‘time-out’ for the Northern Gateway?” *Calgary Herald*, October 12, 2012, <http://www.calgaryherald.com/business/time+time+northern+gateway/7379233/story.html>; Barbara Yaffe, “Barbara Yaffe: ‘Time out’ needed in Enbridge pipeline debate,” *Vancouver Sun*, October 15, 2012, <http://www.canada.com/business/2035/Barbara+Yaffe+Time+needed+Enbridge+pipeline+debate/7393011/story.html>; Rod Love, “A bold way out?,” *Rod Love Letters: Random observations on politics and life*, August 17, 2012, <http://rodlove.com/pipeline-solution-duh/>; Tex Enemark, “Dead pipeline walking,” *Financial Post*, October 18, 2012, <http://opinion.financialpost.com/2012/10/18/dead-pipeline-walking>.

<sup>45</sup> Globe and Mail, Opposition to Kinder Morgan Reaches Northern Gateway Levels, Sept. 18, 2012, <http://www.theglobeandmail.com/news/british-columbia/opposition-to-trans-mountain-pipeline-nearing-northern-gateway-levels/article4551051/>.

Keystone XL's capacity, adding 150,000 bpd to what could be shipped from Canada to the U.S. Efforts to ship tar sands from Alberta to Eastern Canada or the U.S. Northeast are many years from fruition. There is almost no refining capacity in the region capable of processing tar sands, and there are several layers of approvals that would be needed to access coastal ports.

"I personally don't think Northern Gateway will go through anytime soon or if it ever will. There's just too much politics in the soup and there are too many environmental concerns in the soup and there's aboriginal rights in the soup and that makes for a pretty unsavory soup."—  
Roger McKnight, *senior petroleum adviser at En-Pro International Inc.*, Sept. 10, 2012<sup>46</sup>

**4. State Department's assumption that rail transport would enable tar sands growth is inaccurate.**

The State Department's EnSys analysis erroneously assumed that rail transportation alternatives could enable tar sands expansion even if other pipeline alternatives would not move ahead. After acknowledging it had not done a full appraisal of rail capacity, EnSys concluded that rail could meet the transport needs of the growing tar sands industry in a scenario in which Keystone XL and other proposed pipeline projects did not move forward.<sup>47</sup> EnSys estimated that rail capacity from Alberta was capable of expanding by at least 100,000 bpd per year for tar sands crude and suggested that that significant rail expansion for tar sands crude was likely to begin in 2011.<sup>48</sup> It based its conclusion on two major assumptions. First, EnSys assumed a continued upsurge in Western Canadian rail activity, the result of sustained discounts on WCSB crude beginning in early 2011.<sup>49</sup> Second, EnSys reasoned that because rail capacity for Bakken producers increased at a rate of 250,000 bpd per year from 2010 to 2012,<sup>50</sup> a similar rate of rail capacity expansion could occur for tar sands.<sup>51</sup> EnSys's forecasts of the potential for rail as a transport option for tar sands supported the State Department's finding that tar sands production would not be affected by a permitting decision on Keystone XL.<sup>52</sup> However, EnSys's forecasts were based on flawed assumptions and its predictions have been proven inaccurate.

**i. EnSys incorrectly assumed that rail transport for tar sands would follow a similar growth track as rail expansion for Bakken oil.**

In evaluating the expansion potential of rail transport for tar sands, EnSys relied on example of rail expansion by Bakken producers in North Dakota. Assuming that potential for rail expansion by tar sands producers was roughly analogous to that of Bakken tight crude producers, EnSys predicted that rail could expand to supply a shortfall of 1.4 million bpd of takeaway capacity in 2030. There are several critical problems with this prediction.

<sup>46</sup> The Star, Unprecedented opposition may make British Columbia pipeline a non-starter, Sept. 10, 2012, [http://www.thestar.com/news/canada/2012/09/10/unprecedented\\_opposition\\_may\\_make\\_british\\_columbia\\_pipeline\\_a\\_nonstarter.html](http://www.thestar.com/news/canada/2012/09/10/unprecedented_opposition_may_make_british_columbia_pipeline_a_nonstarter.html).

<sup>47</sup> EnSys, Keystone XL Assessment – No Expansion Update, pg. 9.

<sup>48</sup> EnSys Update, pgs. 52, 77/

<sup>49</sup> *Id.*, pg. 52.

<sup>50</sup> *Id.*, pg. 52.

<sup>51</sup> *Id.*, pg. 8.

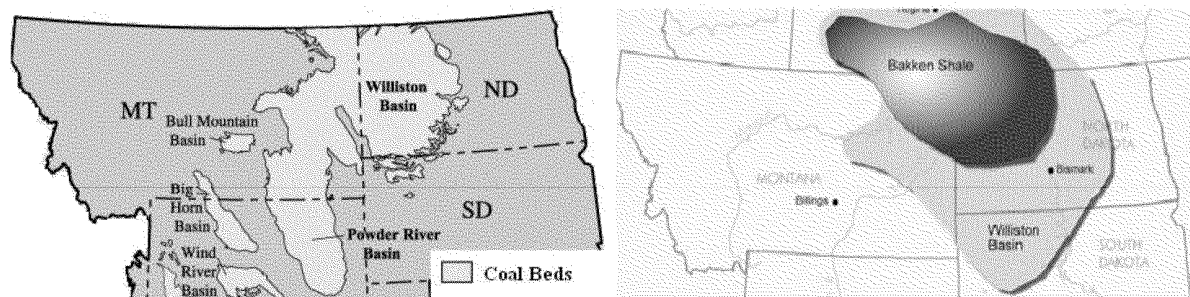
<sup>52</sup> State Department, Keystone XL Final Environmental Impact Statement, August 2011, <http://keystonepipeline-xl.state.gov/documents/organization/182069.pdf>.

Over the last two years, differing rates of development suggest there are significant substantial economic, structural and political factors at play which render rail a significantly more marginal transport option for the tar sands industry than Bakken producers. Recent data do not support the proposition that rail has or will provide a significant means for tar sands crude to access markets outside Canada or the U.S. Midwest, despite substantial discounts for Canadian crude in those refinery markets.

*The growth in rail transportation for Bakken crude*

Rail capacity serving oil producers in North Dakota and Montana has rapidly expanded in recent years, with the majority of production now being transported by rail.<sup>53</sup> Bakken producers increased rail capacity substantially from 140,000 bpd in early 2011 to 700,000 bpd by the end of 2012.<sup>54</sup> Additional proposed rail expansion projects are expected to increase rail capacity serving Bakken producers to 880,000 bpd in 2013.<sup>55</sup>

It is important to note that the rapid expansion of rail to serve the Bakken oilfields is heavily influenced by its proximity to the Powder River Basin bulk coal transport system. The rail lines serving coal mines in Montana and North Dakota transect the Bakken oilfields. The Bakken oil shale is located in the Williston Basin, the region containing the Fort Union coal fields of Montana and North Dakota—the largest coal resources in the continental United States. Moreover, the Bakken oilfields are located between the Fort Union coal beds and coal fired power plants in the Midwest and Southeast that it serves, which in turn are located in close proximity to refineries in the Midwest (PADD II), Gulf Coast (PADD III) and East Coast (PADD I).



**Figure 3: Existing coal resources on North Dakota and Montana relative to Bakken oil discoveries<sup>56</sup>**

Furthermore, the development of rail as a transport option for Bakken crude is heavily facilitated by the fact that the U.S. rail industry has significant glut of excess rail capacity positioned to bring crude production to its market. While coal has historically been the principle commodity transported by the

<sup>53</sup> <http://www.bloomberg.com/news/2013-01-16/enbridge-losing-bakken-oil-business-to-railroads-refiners-says.html>; <http://www.reuters.com/article/2012/11/04/us-railways-oil-northamerica-idUSBRE8A30AX20121104>.

<sup>54</sup> Reuters, Analysis: Crude-by-rail carves out long-term North American niche, Nov. 4, 2012, <http://www.reuters.com/article/2012/11/04/us-railways-oil-northamerica-idUSBRE8A30AX20121104>.

<sup>55</sup> Petroleum News, PN Bakken: Takeaway to Exceed Capacity, Week of January 20, 2013, <http://www.petroleumnews.com/pntruncate/115138813.shtml>

<sup>56</sup> Bakken Field location taken from CAPP 2012 crude oil forecast. North Dakota and Montana coal resources taken from Leslie Ruppert et. al, The US Geological Survey's national coal resource assessment: the results. International Journal of Coal Geology, Volume 50, Issues 1–4, May 2002, Pages 247–274.



national railroad system<sup>57</sup> the collapse of natural gas prices has reduced coal production and coal train loadings by 17 percent below last year's levels, equivalent to about 25,000 freight car loadings per week.<sup>58</sup> This trend appears to be continuing.<sup>59</sup> During this same time, national petroleum shipments have increased by 4,400 loading per week over a year over year basis.<sup>60</sup>

The decline in bulk freight created significant excess capacity in rail cars and infrastructure for railroad companies already operating in the Bakken region. Meanwhile, Bakken producers have preferentially utilized the abundance of readily available rail capacity to transport their high value light crude, using rail to transport 58% of their crude oil.<sup>61</sup> In November 2012, a 200,000 bpd pipeline proposal by Oneok Partners failed because of a lack of interest by producers because an abundance of existing rail capacity allowed them to ship light crude oil to high-priced markets on the East Coast.<sup>62</sup>

*Rail transportation options for tar sands to remain marginal*

Contrary to the assumptions in the EnSys report, rail continues to be a marginal source of transport for WCSB crudes. EnSys estimated that rail capacity from Alberta was capable of expanding by at least 100,000 bpd per year for tar sands crude and suggested that that expansion was likely to begin in 2011.<sup>63</sup> According to CAPP, in 2011 about 20,000 bpd of petroleum originating from Western Canada was transported by rail.<sup>64</sup> During that year, fewer than 5,000 bpd of Canadian crude was exported to the United States by rail.<sup>65</sup> These accounted for less than a quarter percent of total Canadian exports to the United States.

While 2012 rail data specific to crude is not available yet, general rail data compiled by Statistics Canada suggests that WCSB rail capacity has not expanded at the rate seen in the Bakken. Average daily rail shipments of both crude and fuel oils in Western Canada increased from 57,500 bpd in 2011 to 100,000 bpd in 2012.<sup>66</sup> These figures are likely larger than the rail capacity used to export crude out of Western Canada to the U.S. and Eastern Canada, as they include both movements of fuel oils throughout the country and crude within Western Canada.

<sup>57</sup> Reuters, COLUMN-Bakken boom saves BNSF railway amid coal slump: Kemp, October 5, 2012, <http://www.reuters.com/article/2012/10/05/column-kemp-oil-by-rail-idUSL6E8L5A5N20121005>.

<sup>58</sup> Reuters, COLUMN-Bakken boom saves BNSF railway amid coal slump: Kemp, October 5, 2012, <http://www.reuters.com/article/2012/10/05/column-kemp-oil-by-rail-idUSL6E8L5A5N20121005>. Statistics from September 2011 to September 2012.

<sup>59</sup> The U.S. Energy Information Administration (EIA) estimates based on rail loading data that coal shipments from Montana and North Dakota declined from 70.3 million short tons to 61.6 million short tons. This is based on data comparing the 52 weeks ending in Feb. 2 2013 with those ending on Feb. 4, 2012. U.S. EIA, U.S. Weekly Coal Production Overview, Feb. 8, 2013, [http://www.eia.gov/coal/production/weekly/xls/weekly\\_production.xls](http://www.eia.gov/coal/production/weekly/xls/weekly_production.xls).

<sup>60</sup> From 7,300 to 11,700. Reuters, COLUMN-Bakken boom saves BNSF railway amid coal slump: Kemp, October 5, 2012, <http://www.reuters.com/article/2012/10/05/column-kemp-oil-by-rail-idUSL6E8L5A5N20121005>.

<sup>61</sup> North Dakota Pipeline Authority, The Pipeline Publication, January 2013, <http://ndpipelines.files.wordpress.com/2012/04/ndpa-newsletter-v5i3-january-2013.pdf>.

<sup>62</sup> Bloomberg Businessweek, Oneok Shares Fall After Bakken Pipeline Canceled, Nov. 28, 2012, <http://www.businessweek.com/news/2012-11-28/oneok-shares-fall-after-bakken-pipeline-canceled>.

<sup>63</sup> EnSys Update, pgs. 52, 77/

<sup>64</sup> CAPP 2012, pg. 29.

<sup>65</sup> National Energy Board (NEB), Canadian Crude Oil Exports - By Export Transportation System Summary - 5 year trend, <http://www.neb-one.gc.ca/clf-nsi/rnrgynfmrtn/sttstc/crdlndptrlmpdrct/2012/cndncrdlxprtstrnsprttntsystem.xls>.

<sup>66</sup> Statistics Canada, Railway Carloading Statistics By Commodity, <http://www5.statcan.gc.ca/cansim/a05?lang=eng&id=4040002&pattern=4040002&searchTypeByValue=1&p2=35>.

Moreover, even in Canada much of this growth is likely due to increasing production in the Bakken formation rather than movement of tar sands by rail. Canada's two major railroad companies, Canada Pacific and Canada National, both have terminals accessing Bakken crude in Saskatchewan and North Dakota. Canada Pacific has a logistic hub in Van Hook, North Dakota and the railroad opened a new crude loading terminal in Estevan, Saskatchewan last year.<sup>67</sup> Canada National has three truck to rail loading facilities in close proximity of Saskatchewan's Bakken fields and reached an agreement to build another terminal serving Saskatchewan in late 2012.<sup>68</sup> However neither company has expanded its terminal facilities to increase rail capacity from Alberta's tar sands since the EnSys update.

**ii. EnSys substantially underestimated rail costs to the Gulf Coast and has likely underestimated costs to the British Columbia West Coast.**

EnSys dramatically underestimated the cost of shipping diluted bitumen tar sands (dilbit) to Gulf Coast refineries by rail, estimating rail shipping costs to the Gulf Coast ranging from \$9 to \$12 a barrel.<sup>69</sup> Tar sands producer Southern Pacific estimates that its current costs to move product from Hardisty to a Louisiana refinery by rail was \$31 per barrel.<sup>70</sup> Rail continues to be a marginal transport option for the tar sands industry, even in the face of pipeline capacity constraints and steep discounts.

|                                         | Pipeline cost \$/bbl<br>(EnSys 2011 forecast) | Rail cost \$/bbl (EnSys<br>2011 forecast) | Actual Rail cost \$/bbl             |
|-----------------------------------------|-----------------------------------------------|-------------------------------------------|-------------------------------------|
| To Gulf Coast from<br>Edmonton/Hardisty | \$7                                           | \$9 - \$12                                | \$31                                |
| To BC Coast and on to<br>Asia           | \$7                                           | \$7 - \$11                                | Insufficient port<br>infrastructure |

**Figure 4. Actual rail costs compared with EnSys's 2011 estimates<sup>71</sup>**

Currently, there are no shipments of tar sands crude to Canada's west coast due to insufficient port infrastructure and therefore actual rail costs are not available. Moreover, given the degree to which EnSys's assumptions led it to underestimate the cost of shipping tar sands by rail to the Gulf, it is likely that it also underestimated the full costs of shipping tar sands to British Columbia's (BC) west coast. In its analysis, EnSys estimate that per barrel costs for rail transport to BC's west coast would be \$4 more expensive than pipeline transport while rail to the Gulf be up to \$5 more expensive than pipeline transport.<sup>72</sup> While tar sands is not currently being shipped by rail to Asian from BC's West Coast, current rail costs from Edmonton to the Gulf were \$24 per barrel more expensive than shipping costs via pipeline – a disparity nearly five times greater than EnSys originally estimated.

<sup>67</sup> Bloomberg Businessweek, CN Rail, CP Rail Surging With Crude Oil Moving by Trains, Nov. 6, 2012, <http://www.businessweek.com/news/2012-11-06/cn-rail-cp-rail-surging-with-crude-oil-moving-by-trains#p1>.

<sup>68</sup> Canadian National, Bakken Formation, <http://www.cn.ca/en/shipping-north-america-bakken-formation.htm>; Bloomberg Businessweek, CN Rail, CP Rail Surging With Crude Oil Moving by Trains, Nov. 6, 2012, <http://www.businessweek.com/news/2012-11-06/cn-rail-cp-rail-surging-with-crude-oil-moving-by-trains#p1>.

<sup>69</sup> EnSys Update, pg. 67.

<sup>70</sup> Edmonton Journal, Alberta bitumen makes it to Mississippi by Rail, Jan. 7, 2013, <http://www.edmontonjournal.com/business/Alberta+bitumen+makes+Mississippi+rail/7785676/story.html>

<sup>71</sup> EnSys Update, pg. 67.

<sup>72</sup> EnSys Update, pg. 67.

The significant cost of rail transport from WCSB would be unlikely to support investment in new high cost tar sands projects. New tar sands mines have a break-even price of \$85 to \$95 per barrel while in situ facilities carry a break-even price near \$60 per barrel.<sup>73</sup> Train transportation costs in excess of \$30 per barrel would require heavy crude prices above \$90 to \$125 simply to break even. While limited existing rail capacity may provide an opportunity for producers facing a significant discount, the poor economics of rail transport do not justify the significant investment in rail infrastructure necessary to provide sufficient capacity to serve the industry's growth plans. Moreover, new tar sands production projects, many of which are already marginal using cheaper pipeline options, are not economically justified after incorporating the high cost of rail as a long term transport option.

"We have to be honest about it - with the volumes we need to move we need to build new pipelines," Danielle Smith, Alberta's Wildrose Party Leader when asked about the viability of rail, Jan. 1, 2013.<sup>74</sup>

**iii. Tar sands transport to British Columbia's coastal ports via rail would require new infrastructure and face significant political opposition**

The State Department's EnSys report makes general assumptions that rail transportation can transport tar sands crude in the absence of pipeline alternatives. However, British Columbia's coastal ports do not currently have the necessary infrastructure to unload crude oil from rail to tankers.<sup>75</sup> Proposals to expand rail transportation through British Columbia to the Pacific would likely face the same level of opposition from communities and First Nations across the province as tar sands pipeline proposals have. Sixteen Canadian environmental organizations recently sent a letter to Canadian National Rail (CN) to express opposition to any plans to ship tar sands from Alberta to British Columbia by rail. The Union of BC Municipalities passed a resolution last September against any expansion of oil tanker traffic to the West Coast.<sup>76</sup> Several municipalities along the proposed Northern Gateway route and CN rail line have passed their own resolutions against oil tanker traffic introduction and expansion. Coastal First Nations have a tanker ban in place that applies to any tar sands supertankers in the North Pacific Coast. The Save the Fraser Declaration, signed by over 130 First Nations, bans the transport of tar sands through the watershed, regardless of whether done by rail or pipeline.<sup>77</sup>

<sup>73</sup> Forbes, Oil Price Differentials: Caught Between the Sands and the Pipelines, June 21, 2012, pg. 3, <http://www.forbes.com/sites/energysource/2012/06/21/oil-price-differentials-caught-between-the-sands-and-the-pipelines/3/>.

<sup>74</sup> Sun News, Oilsands trains fine for now, but pipelines needed in the long run, says Danielle Smith Jan. 2, 2013, <http://www.sunnewsnetwork.ca/sunnews/politics/archives/2013/01/20130102-165548.html>.

<sup>75</sup> Globe and Mail, Oil pipeline opponents may target rail shipments next, January 31, 2013, <http://www.theglobeandmail.com/news/british-columbia/oil-pipeline-opponents-may-target-rail-shipments-next/article8091061/>.

<sup>76</sup> CBC News, B.C. municipalities reject oil tanker expansion. Sept, 27, 2012, <http://www.cbc.ca/news/canada/british-columbia/story/2012/09/27/bc-ubcm-oil-tanker-resolution.html>.

<sup>77</sup> Marketwire, Opposition to Enbridge Grows as First Nations and Mayor of Vancouver Stand Together Against Threat of Oil Tankers and Pipelines, Dec. 13, 2012, <http://www.marketwire.com/press-release/opposition-enbridge-grows-as-first-nations-mayor-vancouver-stand-together-against-threat-1737438.htm/>.

## 5. The oil industry and financial community recognize Keystone XL's central role in enabling tar sands production growth

Major industry and financial commentators now recognize that Keystone XL plays a key role in enabling tar sands production growth. This role is due to the major factors we discuss above:

- ✓ Tar sands production has proceeded at a higher pace than originally projected.
- ✓ Tar sands production will soon exceed pipeline capacity.
- ✓ Tar sands is currently selling at a significant discount.
- ✓ Other proposed pipelines and rail options are either not proceeding or are not proceeding to the same degree.

In fact, there is clear evidence from the past year that Keystone XL has already affected production. Currently, industry produces approximately 2 million barrels per day and has targeted growth to 6 million barrels a day by 2030.<sup>78</sup> However, recent financial analysis estimates that the rejection of Keystone XL will reduce tar sands growth by 450,000 bpd by 2017 and as much as 2.4 million bpd by 2030.<sup>79</sup> Constraining industry's growth by 2.4 million barrels a day by 2030 is equivalent to avoiding nearly 400 million metric tons of carbon emissions.<sup>80</sup>

An August 2012 CIBC World Market Report forecasted long term growth in tar sands production would slow to half the pace currently projected by industry.<sup>81</sup> CIBC forecasted that:

“Even if Keystone XL, TransMountain, Northern Gateway and the tentative TransCanada West Coast Line were all built, there would still not be enough pipeline capacity to handle planned growth through 2020... When plotted against planned pipeline capacity, it becomes abundantly clear that not all company planned oil sands projects can proceed.”<sup>82</sup>

<sup>78</sup> Canadian Association of Petroleum Producers. *Crude Oil: Forecasts, Markets and Pipelines*. CAPP Report, Page 37; June 2012. <http://www.capp.ca/getdoc.aspx?DocId=209546&DT=NTV>

Canadian Association of Petroleum Producers (CAPP), CAPP Crude Oil Forecast, Markets & Pipelines Report, 37, June 2012.

<sup>79</sup> RBC Dominion Securities Inc. estimated that tar sands growth would be reduced by a third, or 450,000 bpd by 2017, if Keystone XL was rejected, while CIBC estimates that pipeline constraints will reduce production growth by between 1.7 million bpd and 2.4 million bpd by 2030. *Globe and Mail*, Oil Discount Raises Alarms for Chinese Firms, Feb. 12, 2013, <http://www.theglobeandmail.com/globe-investor/oil-discount-raises-alarms-for-chinese-firms/article8471597/>; Hussain, Yadullah. “Oil sands producers could feel squeeze in crowded market” *Financial Post* 16 August 2012. <http://business.financialpost.com/2012/08/16/oil-sands-producers-could-feel-squeeze-in-crowded-market/>

<sup>80</sup> Hussain, Yadullah. “Oil sands producers could feel squeeze in crowded market” *Financial Post* 16 August 2012. <http://business.financialpost.com/2012/08/16/oil-sands-producers-could-feel-squeeze-in-crowded-market/>

<sup>81</sup> Nathan Vanderklippe, Glut of cheap crude raise doubts over oil sands expansion, *Globe and Mail*, Aug. 17, 2012, <http://www.theglobeandmail.com/globe-investor/pipelines-glut-of-cheap-crude-raise-doubts-over-oil-sands-expansion/article4485891/>.

<sup>82</sup> *Financial Post*, Oil sands producers could feel squeeze in crowded market, Aug. 16, 2012, <http://business.financialpost.com/2012/08/16/oil-sands-producers-could-feel-squeeze-in-crowded-market/?lsa=9857-ef43>.

CIBC estimates suggest that producers will have to scale back production forecast anywhere between 1.7 million bpd and 2.4 million bpd if pipeline access is restricted. In a report released in January, HIS CERA reached similar conclusions noting that:

“The ultimate size of [oil sands development] depends on the ability to develop pipeline corridors to markets—connecting growing supply with demand. What connections are made, when, and how, will shape the future development of both oil sands and tight oil.”<sup>83</sup>

In a report released in January 2013, Standard & Poor forecast that regulatory delays in approving new pipelines are putting this putting future tar sands production growth at risk.<sup>84</sup> TD Economics, a major Canadian Bank, made a similar finding regarding the tar sands industry, referring to pipeline capacity constraints as “a serious challenge to its long term growth.” The bank estimated that pipelines out of Western Canada could effectively be full in 2014, standing over a million barrels a day of potential tar sands oil growth.<sup>85</sup>

“Oil sands was more of a compelling story even a year ago than it is today. Now, if you've got a billion dollars to spend, you've got to be thinking about all these threats and new opportunities and how you're going to spend your money...[It's] a big rethink of capital allocation.” Peter Tertzakian, the Chief energy economist with ARC Financial Corp.<sup>86</sup>

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<sup>83</sup> Future Markets for Canadian Oil Sands, HIS CERA, January 2013, pg. 16, <http://www.ihs.com/products/cera/energy-industry/oil-sands-dialogue.aspx?tid=t5>.

<sup>84</sup> Pipeline export constraints will continue curbing oil industry enthusiasm in 2013 Oil & Gas Insider, Jan. 1, 2013, [http://www.oilandgasinquirer.com/article.asp?article=magazine%2F130101%2FMAG2013\\_J10000.html](http://www.oilandgasinquirer.com/article.asp?article=magazine%2F130101%2FMAG2013_J10000.html)

<sup>85</sup> Oil industry faced with ‘serious challenge’ as pipelines fill up, TD warns, Financial Post, Dec. 17, 2012, <http://business.financialpost.com/2012/12/17/oil-industry-faced-with-serious-challenge-as-pipelines-fill-up-td-warns/>.

<sup>86</sup> Nathan Vaderklippe, A Wary Oil Patch Gears Down, Globe and Mail, Aug. 10, 2012, <http://www.theglobeandmail.com/globe-investor/wary-oil-patch-gears-down/article4470876/m>.